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AGREEMENT OF LEASE

among

BATTERY PARK CITY AUTHORITY,

Landlord

and

NEW YORK CITY EDUCATIONAL CONSTRUCTION FUND

and

THE CITY OF NEW YORK

Tenant

Premises  
Site 22

Battery Park City -- North Neighborhood Residential Area  
New York, New York

Dated as of October 1, 1996

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LEASE  
TABLE OF CONTENTS

Page

ARTICLE 1.	
DEFINITIONS . . . . .	1
ARTICLE 2.	
PREMISES AND TERM OF LEASE . . . . .	9
ARTICLE 3.	
RENT . . . . .	10
ARTICLE 4.	
TAXES AND IMPOSITIONS . . . . .	11
ARTICLE 5.	
INTENTIONALLY OMITTED . . . . .	14
ARTICLE 6.	
INSURANCE . . . . .	14
ARTICLE 7.	
RESTORATION . . . . .	18
ARTICLE 8.	
CONDEMNATION . . . . .	25
ARTICLE 9.	
ASSIGNMENT, SUBLETTING, ETC.; AUTHORIZATION FOR SUBLEASE . . . . .	29
ARTICLE 10.	
CONSTRUCTION AND OWNERSHIP OF BUILDINGS AND EQUIPMENT; CONSTRUCTION OF UTILITIES AND SCHOOL SIDEWALKS . . . . .	30
ARTICLE 11.	
REPAIRS . . . . .	31

TABLE OF CONTENTS (Continued)

	<u>Page</u>
ARTICLE 12.	
CHANGES, ALTERATIONS AND ADDITIONS . . . . .	32
ARTICLE 13.	
REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES; COMPLIANCE WITH MASTER LEASE . . . . .	35
ARTICLE 14.	
EQUIPMENT . . . . .	36
ARTICLE 15.	
DISCHARGE OF LIENS; BONDS . . . . .	37
ARTICLE 16.	
NO REPRESENTATIONS BY LANDLORD; POSSESSION . . . . .	38
ARTICLE 17.	
LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC. . . . .	39
ARTICLE 18.	
INDEMNIFICATION OF LANDLORD AND OTHERS . . . . .	40
ARTICLE 19.	
RIGHT OF INSPECTION, ETC. . . . .	43
ARTICLE 20.	
LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS . . . . .	44
ARTICLE 21.	
NO ABATEMENT OF RENTAL . . . . .	44
ARTICLE 22.	
PERMITTED USE; NO UNLAWFUL OCCUPANCY . . . . .	45
ARTICLE 23.	

TABLE OF CONTENTS (Continued)

Page

EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC. . . . .	45
ARTICLE 24.	
NOTICES . . . . .	50
ARTICLE 25.	
COMMUNITY FACILITIES . . . . .	51
ARTICLE 26.	
MARGINAL STREET PLAYGROUND . . . . .	51
ARTICLE 27.	
SUBORDINATION; ATTORNMENT . . . . .	52
ARTICLE 28.	
EXCAVATIONS AND SHORING . . . . .	52
ARTICLE 29.	
CERTIFICATES BY LANDLORD AND TENANT . . . . .	53
ARTICLE 30.	
CONSENTS AND APPROVALS . . . . .	54
ARTICLE 31.	
SURRENDER AT END OF TERM . . . . .	55
ARTICLE 32.	
ENTIRE AGREEMENT . . . . .	56
ARTICLE 33.	
QUIET ENJOYMENT . . . . .	56
ARTICLE 34.	

TABLE OF CONTENTS (Continued)

	<u>Page</u>
ARBITRATION . . . . .	56
ARTICLE 35.	
EASEMENTS . . . . .	57
ARTICLE 36.	
ROOF OF PREMISES . . . . .	59
ARTICLE 37.	
DEVELOPMENT RIGHTS . . . . .	60
ARTICLE 38.	
INVALIDITY OF CERTAIN PROVISIONS . . . . .	60
ARTICLE 39.	
RECORDING OF MEMORANDUM . . . . .	60
ARTICLE 40.	
MISCELLANEOUS . . . . .	61

EXHIBITS

- EXHIBIT A-1 - DESCRIPTION OF RESIDENTIAL LAND
- EXHIBIT A-2 - DESCRIPTION OF SCHOOL LAND
- EXHIBIT B - TITLE MATTERS

AGREEMENT OF LEASE (this "Lease") made as of October 1, 1996 among BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281, and NEW YORK CITY EDUCATIONAL CONSTRUCTION FUND (the "Fund"), a corporate governmental agency constituting a public benefit corporation under the laws of the State of New York, having an office at 28-11 Queens Plaza North, Long Island City, New York 11101, and THE CITY OF NEW YORK (the "City"), a municipal corporation, with its office at City Hall, in the Borough of Manhattan, City, County and State of New York.

WITNESSETH:

It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

#### ARTICLE 1.

#### DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings.

"Architect" shall mean an architect approved by Landlord, or any successor approved by Landlord, which approval, in each case, shall not be unreasonably withheld.

"Base Rent" shall have the meaning provided in Section 3.01(a).

"Board of Education" shall mean the Board of Education of the City School District of the City of New York.

"Bond Trustee" shall mean the Trustee under the Fund's Bond Resolution.

"Buildings" shall mean the building or buildings, including footings and foundations, Equipment and other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon the School Land and Tenant's Easement Equipment, including, without limitation, Capital Improvements, and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"Business Day" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by any of the State

of New York, the federal government, the City or Tenant or the state or city in which Bond Trustee is located.

"Capital Improvement" shall have the meaning provided in Section 12.01.

"Casualty Termination Date" shall have the meaning provided in Section 7.08(b).

"Casualty Termination Restoration" shall have the meaning provided in Section 7.08(b).

"Certificate of Occupancy" shall mean a certificate of occupancy issued by the Department of Buildings of the City pursuant to Section 1804 of the New York City Charter or other similar certificate issued by a department or agency of the City.

"City" shall mean The City of New York, a municipal corporation of the State of New York.

"City Commencement Date" shall mean the date immediately following the School Project Bonds Termination Date.

"City Restoration Funds" shall have the meaning provided in Section 7.02(b).

"Combined Occupancy Structure" shall mean the building or buildings, including footings and foundations, equipment and other improvements and appurtenances of every kind and description erected, constructed, or placed upon the Land pursuant to the Development Agreement.

"Commencement Date" shall mean the date of the original issuance of the School Project Bonds.

"Construction Agreements" shall mean agreements for Restoration, Capital Improvement, rehabilitation, alteration, repair or demolition performed pursuant to this Lease.

"Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, N.Y. - Northeastern N.J. Area, All Items (1982-1984 = 100), or any successor or substitute index thereto, appropriately adjusted; provided that if there shall be no successor index and the parties shall fail to agree upon a substitute index within thirty (30) days, or if the parties shall fail to agree upon the appropriate adjustment of such successor or substitute index within thirty (30) days, a substitute index or the appropriate adjustment of such successor or substitute index, as the case may be, shall be determined by arbitration pursuant to Article 34.

"Default" shall mean any condition or event which constitutes or, after notice or lapse of time, or both, would constitute an Event of Default.

"Depository" shall mean a savings bank, a savings and loan association or a commercial bank or trust company, designated by Landlord and approved by Tenant, which approval shall not be unreasonably withheld, to serve as Depository pursuant to this Lease, provided all funds held by Depository pursuant to this Lease shall be held in New York City, and provided further that each of the above entities, or any combination of such entities, shall qualify as a Depository under this Lease only if each such entity shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions and (b) have individual or combined assets, as the case may be, of not less than five hundred million dollars (\$500,000,000). If Landlord shall have failed to designate a Depository within ten (10) Business Days after Tenant's request, Tenant shall have the right to designate such Depository.

"Design Guidelines" shall mean the Design Guidelines, North Residential Neighborhood, Battery Park City, and Design Guidelines, Block 22: Public School and Residential Building, as the same may be further amended, modified or supplemented prior to Substantial Completion.

"Development Agreement" shall mean the Development Agreement of even date herewith made by and among Landlord, the Fund, the City and the Board of Education, with respect to the financing and construction of the Combined Occupancy Structure, as such agreement may be hereafter amended, modified or supplemented, or such other agreement for the construction of the School Portion as may be made by the Fund, the City, the Board of Education and a developer (other than Landlord), as may be approved by Landlord.

"Development Rights" shall have the meaning provided in Article 37.

"Due Date" shall mean, with respect to an Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof.

"Environmental Laws" shall mean any and all federal, state or local environmental laws, ordinances, rules, or regulations (whether existing as of the Commencement Date or thereafter enacted or promulgated), or any other such laws, ordinances, rules or regulations of any other governmental or quasi-governmental entity, or any judicial or administrative interpretations of such laws, ordinances, rules or regulations, including, without limitation, Local Law 76 of 1985 of the City, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et



seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) and regulations adopted and publications promulgated pursuant thereto, and all other federal statutes and regulations promulgated pursuant thereto.

"Equipment" shall mean all fixtures incorporated in the improvements located on the School Land, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, incinerators, garbage compactors, antennas, except to the extent any of the foregoing shall be owned by contractors engaged in maintaining the same. "Equipment" shall not mean any fixtures or utilities owned by any utility company.

"Event of Default" shall have the meaning provided in Section 23.01.

"Expiration Date" shall have the meaning provided in Article 2.

"Fund Act" shall mean the New York City Educational Construction Fund Act, being and constituting Article 10 of the Education Law of the State of New York (Chapter 16 of the Consolidated Laws of the State of New York), as amended from time to time.

"Fund's Bond Resolution" shall mean the Revenue Bond Resolution, adopted by Fund on March 23, 1994, as amended and supplemented to the date of this Lease and as the same may hereafter be amended and supplemented from time to time.

"Governmental Authority (Authorities)" shall mean the United States of America, the State of New York, the City and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof.

"Hazardous Materials" shall mean asbestos, urea formaldehyde, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, or related materials, including, without limitation, those substances and materials defined as "Hazardous Substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and

Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) and in regulations adopted and publications promulgated pursuant thereto.

"Impositions" shall have the meaning provided in Section 4.01.

"Improvement Approvals" shall have the meaning provided in Section 12.01(a).

"Indemnities" shall have the meaning provided in Section 18.01.

"Insurance Funds" shall have the meaning provided in Section 7.02(b).

"Land" shall mean collectively the Residential Land and the School Land.

"Landlord", on the date as of which this Lease is made, shall mean Battery Park City Authority, but thereafter "Landlord" shall mean only the landlord at the time in question under this Lease.

"Landlord's Easement Equipment" shall have the meaning provided in Section 35.02.

"Lease" shall mean this Agreement of Lease and all amendments, modifications and supplements thereof.

"Lease Year" shall mean the twelve-month period beginning on the Commencement Date and each succeeding twelve-month period during the Term.

"Loss or Damage by Casualty" shall have the meaning provided in Section 7.01.

"Maintenance Commencement Date" shall mean the date on which (i) a certificate of substantial completion shall have been issued by the School Architect (as defined in the Development Agreement) with respect to the Premises, and (ii) a temporary Certificate of Occupancy shall have been issued with respect to all portions of the Premises.

"Marginal Street Property" shall have the meaning provided in Section 26.01.

"Master Development Plan" shall mean the plan annexed to the Master Lease, as the same may be hereafter amended, modified or supplemented.

"Master Landlord", on the date as of which this Lease is made, shall mean Battery Park City Authority, but thereafter,

"Master Landlord" shall mean only the lessor at the time in question under the Master Lease.

"Master Lease" shall mean the Restated Amended Agreement of Lease, made as of June 10, 1980, between BPC Development Corporation, as landlord, and Battery Park City Authority, as tenant, a Memorandum of which was recorded on June 11, 1980 in the Office of the City Register, New York County in Reel 527 at page 163, as amended by First Amendment to Restated Amended Lease dated as of June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 424, Second Amendment to Restated Amended Lease dated June 15, 1983 and recorded on June 20, 1983 in said Registers Office in Reel 696 at page 432, and Third Amendment to Restated Amended Lease dated as of August 15, 1986 and recorded on October 22, 1986 in said Register's Office in Reel 1133 at page 569, and Fourth Amendment to Restated Amended Lease dated as of May 25, 1990 and recorded May 30, 1990 in said Register's Office in Reel 1691 at page 0301, as the same may be hereafter amended, modified or supplemented.

"Minimum Amount" shall mean \$3,000,000 (as such amount shall be increased on the fifth (5th) anniversary of the Commencement Date and thereafter on each fifth (5th) anniversary thereof, by adding to \$3,000,000 an amount equal to the product (but not less than zero) of \$3,000,000 and the percentage obtained by dividing (x) the increase in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Commencement Date occurs by (y) the Consumer Price Index for the month in which the Commencement Date occurs). Any dispute as to the calculation of any such increase in the Minimum Amount shall be determined by arbitration pursuant to Article 34.

"Person" shall mean an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, State, County or municipal government or any bureau, department or agency thereof,

"Plans and Specifications" shall mean collectively the plans and specifications applicable to the School Portion and the plans and specifications applicable to the Residential Portion, as described in Exhibit B to the Development Agreement, with such changes thereto as may be permitted in the Development Agreement.

"Pre-existing Environmental Materials" means any Hazardous Materials existing on, affixed to, under or emanating from the Project Area on or before the date of this Lease.

"Premises" shall mean the School Land and the Buildings designed, constructed, improved and equipped in accordance with the Development Agreement.

"Project Area" shall mean the premises demised pursuant to the Master Lease.

"Rental" shall have the meaning provided in Section 3.02.

"Requirements" shall have the meaning provided in Section 13.01.

"Requisitioning Party" shall have the meaning provided in Section 7.05(a).

"Residential Land" shall mean the land described in Exhibit A-1 attached hereto, together with the plane of air above the School Land as described in Exhibit A-1.

"Residential Portion" shall mean the portion of the Combined Occupancy Structure located on the Residential Land, the Landlord's Easement Equipment and the Structural Supports.

"Residential Tower" shall have the meaning provided in Section 35.02.

"Restoration" shall have the meaning provided in Section 7.01.

"Restoration Funds" shall have the meaning provided in Section 7.02(b).

"Restore" shall have the meaning provided in Section 7.01.

"School Land" shall mean the land described in Exhibit A-2 attached hereto.

"School Portion" shall mean (i) the portion of the Combined Occupancy Structure located on the School Land, (ii) the Equipment and (iii) the Tenant's Easement Equipment.

"School Project" shall mean the design, construction, improvement and equipping of the portion of the Combined Occupancy Structure located on the School Land in accordance with the Development Agreement.

"School Project Bonds" shall mean the New York City Educational Construction Fund Junior Subordinated Revenue Bonds, Series 1996 (Battery Park City Project), and any additional bonds issued under and secured by the Fund's Bond Resolution for the purpose of financing or refinancing costs of the School Project.

"School Project Bonds Termination Date" shall mean the date on which none of the School Project Bonds shall be outstanding under the Fund's Bond Resolution.

"School Sidewalks" shall have the meaning provided in Section 11.02.

"Settlement Agreement" shall mean the Settlement Agreement, dated as of June 6, 1980, between the City and the Urban Development Corporation, as supplemented by Letter, dated June 9, 1980, from Richard A. Kahan to Edward I. Koch, and amended by Amendment to Settlement Agreement dated as of August 15, 1986 between the City and Landlord, as supplemented by an Agreement for Certain Payments, dated as of June 28, 1989, between the City and Landlord, amended May 18, 1990, and as supplemented by an Agreement and Consent and a Memorandum of Understanding, both dated December 30, 1989, and as supplemented by Agreement and Consent Pursuant to Settlement Agreement dated as of October 15, 1993, and as supplemented by an Agreement and Consent Pursuant to Settlement Agreement dated as of April 10, 1995, and as supplemented by the 1996 Agreement and Consent Pursuant to Settlement Agreement dated as of October 1, 1996 and as the same may be hereafter amended, modified or supplemented.

"Structural Supports" shall have the meaning provided in Section 35.02.

"Sublease" shall mean the Agreement of Lease with respect to the Premises, dated as of the date hereof, between the Fund and the Subtenant.

"Sublease Default Termination" shall have the meaning provided in Section 9.04.

"Subtenant" shall mean the City acting by and through the Board of Education.

"Taking Restoration Funds" shall have the meaning provided in Section 8.03(b).

"Tax Year" shall mean each fiscal year of the City.

"Taxes" shall mean the real property taxes assessed and levied against the Premises or any part thereof pursuant to the provisions of Chapter 58 of the Charter of the City and Title II, Chapter 2 of the Administrative Code of the City, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part and which would otherwise be payable if the Premises or any part thereof or the owner thereof were not exempt therefrom.

"Tenant" shall mean (i) with respect to the period commencing on the Commencement Date and terminating on the School Project Bonds Termination Date, the Fund, and (ii) with respect to the period commencing on the City Commencement Date and thereafter during the remainder of the Term, the City.

"Tenant's Easement Equipment" shall have the meaning provided in Section 35.01.

"Tenant's Property" shall have the meaning provided in Section 10.03.

"Term" shall mean the term of this Lease as set forth in Article 2 hereof.

"Title Matters" shall mean those matters affecting title to the Land set forth in Exhibit B hereto.

"Unavoidable Delays" shall mean (i) with respect to Tenant or its obligations hereunder, delays incurred by Tenant due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Tenant is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, unavoidable casualty or other similar causes beyond the control of Tenant (but not including Tenant's insolvency or financial condition), and (ii) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Landlord is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, unavoidable casualty or other similar causes beyond the control of Landlord (but not including Landlord's insolvency or financial condition); in each case provided such party shall have notified the other party not later than fourteen (14) days after such party knows of the occurrence of same and the effects of which a prudent Person in the position of the party asserting such delay could not have reasonably prevented.

"Utilities" shall have the meaning provided in Section 11.01.

## ARTICLE 2.

### PREMISES AND TERM OF LEASE

Landlord does hereby demise and sublease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Title Matters.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years (the "Term") commencing on the Commencement Date and expiring on July 17, 2069 or on such earlier date upon which this Lease may be terminated as hereinafter

provided (the "Expiration Date"), subject, however, to the provisions of Section 31.05.

### ARTICLE 3.

#### RENT

Section 3.01. For the period beginning on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to Landlord, without notice or demand, an annual sum (the "Base Rent") for each Lease Year (or portion thereof) from the Commencement Date through the Expiration Date, equal to One Dollar (\$1.00) per annum. The Base Rent due for any period of less than a full Lease Year, shall be appropriately apportioned. Landlord acknowledges receipt in full of all Base Rent due hereunder, and Tenant waives any right to seek reimbursement of any Base Rent in the event of the early expiration or termination of this Lease.

Section 3.02. All amounts required to be paid by Tenant pursuant to this Lease, including, without limitation, Base Rent and Impositions (collectively, "Rental"), shall constitute rent under this Lease, and shall be payable in currency which at the time of payment is legal tender for public and private debts in the United States of America, and shall be payable to the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant. Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever except as specifically set forth in this Lease, so that this Lease shall yield, net, to Landlord, Rental in each year during the Term and that Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises which may arise or become due or payable during or after (but attributable to a period falling within) the Term. Tenant and its authorized representatives shall have the right to audit any and all records of Landlord with respect to all costs, expenses and charges paid by Tenant as Rental hereunder. If, following such audit, Tenant determines that Landlord has overcharged Tenant with respect to any such costs, expenses and charges, Landlord shall promptly refund to Tenant the amount of such overcharge.

## ARTICLE 4.

### TAXES AND IMPOSITIONS

Section 4.01. From and after the Commencement Date, Tenant shall pay, as hereinafter provided, all of the following items (collectively, "Impositions") imposed by any Governmental Authority (other than a Governmental Authority acting solely in its capacity as Landlord and not as a Governmental Authority):

(a) Taxes, (b) real property assessments, (c) personal property taxes, (d) occupancy and rent taxes, (e) water, water meter and sewer rents, rates and charges, (f) excises, (g) levies, (h) license and permit fees, (i) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (j) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto and (k) any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which at any time during the Term are (1) assessed, levied, confirmed, imposed upon, or become due and payable out of or in respect of, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises, or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault (other than a vault in respect of which a utility company is obligated to pay any charge specified above or which is exempt from any such charge by reason of use thereof by any such utility company), passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises, or (v) any personal property, Equipment or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) payable by Tenant hereunder, each such Imposition, or installment thereof, during the Term to be paid not later than the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant, after notice to Landlord, may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, provided that all such installment payments together with applicable interest, if any, relating to periods prior to the date definitely fixed in Article 2 hereof for the expiration of the Term shall be made prior to the Expiration Date.



Section 4.02. Notwithstanding anything contained in this Article 4 to the contrary, Landlord and Tenant each hereby represent that neither is aware of any Imposition (other than water and sewer charges) which presently is or may hereafter become applicable to the Premises.

Section 4.03. Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit, capital or transfer gains tax, transfer or gift taxes of Landlord, or any corporate franchise tax imposed upon Landlord.

Section 4.04. Any Imposition relating to a Tax Year, or any other period, a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the date definitely fixed in Article 2 hereof for the expiration of the Term (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Commencement Date or such date definitely fixed for the expiration of the Term, as the case may be, so that Tenant shall pay that portion of such Imposition which bears the same ratio to such Imposition as that part of such Tax Year or other period included in the period of time after the Commencement Date or before such date definitely fixed in Article 2 for the expiration of the Term bears to such Tax Year or other period, and Landlord shall pay the remainder thereof. Other than in respect of Impositions relating in part to a period of time before the Commencement Date, no such apportionment of Impositions shall be made if this Lease is terminated prior to the Expiration Date as the result of an Event of Default.

Section 4.05. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition (other than Taxes) by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition shall be postponed if, and only as long as neither the Premises nor any part thereof, or interest therein or any income therefrom or any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability.

Section 4.06. Tenant shall have the right to seek a reduction in the valuation of the Premises assessed for Taxes and to prosecute any action or proceeding in connection therewith, provided no such action or proceeding shall affect Tenant's obligation to pay any installment of Taxes.

Section 4.07. Landlord shall not be required to join in any proceedings referred to in Sections 4.05 or 4.06 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and cooperate in such proceedings or permit the same to be brought in its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. If the provisions of such law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Master Landlord, Landlord shall use its best efforts to cause Master Landlord to join and cooperate in such proceedings or permit the same to be brought in the name of Master Landlord, provided Master Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Master Landlord for any and all costs and expenses which Master Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. In the event Tenant shall institute a proceeding referred to in Sections 4.05 or 4.06 hereof and no law, rule or regulation in effect at the time requires that such proceeding be brought by and/or in the name of Landlord, Landlord, nevertheless, shall, at Tenant's cost and subject to the reimbursement provisions hereinabove set forth, cooperate with Tenant in such proceeding.

Section 4.08. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

ARTICLE 5.

INTENTIONALLY OMITTED

ARTICLE 6.

INSURANCE

Section 6.01. At all times from and after the Commencement Date to but not including the Maintenance Commencement Date, the Premises shall be insured against such hazards and in such amounts as may be required in the Development Agreement.

Section 6.02.

(a) Tenant shall, at its sole cost and expense, at all times from and after the Maintenance Commencement Date and thereafter throughout the Term,

1. keep the Premises and contents insured under an "All Risk of Physical Loss" form of policy, including, without limitation, coverage for loss or damage by water (including sprinkler leakage coverage as specified in Section 6.02(a)(4)), flood, subsidence and earthquake and including fine arts floaters where applicable, valuable papers and records coverage including costs to restore information contained in such valuable papers and records, electronic data processing insurance for equipment and media; including costs to restore information contained in such media; such insurance to be written on an "Agreed Amount" basis, with full replacement costs, with the replacement value of the Premises to be determined from time to time, but not less frequently than required by the insurer and in any event at least once every three (3) years, it being agreed that no omission on the part of Landlord to request any such determination shall relieve Tenant of its obligation to determine the replacement value thereof in the absence of such valuation, the FM (Factory Mutual) or IRI (Industrial Risk Insurers) Indices will be applied);

2. provide and keep in force commercial general liability insurance against liability for bodily injury, death and property damage, it being agreed that such insurance shall (A) be in an amount as may from time to time be reasonably required by Landlord, but not less than Five Million Dollars (\$5,000,000) combined single limit inclusive of primary, umbrella and following form excess policies for liability for bodily injury, death and property damage, (B) include the Premises and all streets, alleys, sidewalks, curbs and open spaces, (C) be of a blanket contractual nature and shall contain an agreement by the insurer to indemnify and hold

harmless Landlord and Master Landlord from and against all cost, expense and/or liability (including, without limitation, attorneys' fees and disbursements) arising out of or based upon any and all claims, accidents, injuries and damages mentioned in Article 18 or any other risk covered by such general liability insurance, and (D) also provide the following protection:

- (i) blanket automatic contractual liability to include bodily injury to others assumed by Tenant;
- (ii) water damage legal liability; and
- (iii) all coverage formerly provided under the broad form comprehensive general liability endorsement;

3. provide and keep in force workers' compensation, New York State disability and other statutory New York State insurance for all persons employed by Tenant at or in connection with the Premises;

4. provide and keep in force sprinkler leakage insurance if a sprinkler system shall be located in any portion of the Premises and if such system is not covered by the insurance required to be provided and kept in force pursuant to any other provisions hereof, which sprinkler leakage insurance shall be in amounts approved by Landlord, which approval shall not be unreasonably withheld;

5. provide and keep in force boiler and machinery insurance in an amount as may from time to time be reasonably determined by Landlord but not less than the replacement value of the equipment per accident on a combined basis covering direct property loss and loss of income and covering all steam, mechanical and electrical equipment, including without limitation, all boilers, unfired pressure vessels, air conditioning equipment, elevators, piping and wiring; and

6. provide and keep in force such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are insured against by the Fund with respect to the school portions of other combined occupancy structures within the meaning of the Fund Act or otherwise commonly insured against by public schools.

(b) All insurance provided by Tenant as required by Section 6.02(a) (except the insurance under 6.02(a)(3)) shall name Tenant and Subtenant as named insured and Landlord and Master Landlord as additional insureds to the extent, where applicable, of

their respective insurable interests in the Premises, and shall be primary with respect to any other coverage which Landlord and Master Landlord may obtain. (Landlord's and Master Landlord's coverage shall be in excess of any coverage provided in favor of Landlord and Master Landlord by Tenant.) A joint loss agreement endorsement shall be obtained from each insurer providing insurance if such insurance is being provided by more than one insurer.

(c) Whenever Tenant shall be required to carry insurance under this Section 6.02, Tenant shall not be required to carry insurance in any greater amounts or against any additional hazards than at the time are commonly carried by Tenant for similar educational facilities, provided that the types or amounts of such coverage shall never be different from or less than, as the case may be, the types or amounts specifically required hereunder. Any dispute as to the amounts of additional insurance to be carried, or the additional kinds of hazards to be insured against, shall be resolved by arbitration pursuant to Article 34.

#### Section 6.03.

(a) Copies of the originals of all policies required pursuant to Section 6.02 shall be delivered to Landlord immediately upon receipt from the insurance company or companies, together with proof satisfactory to Landlord that the full premiums thereon have been paid, provided, that Landlord shall not, by reason of custody of copies of such policies, be deemed to have knowledge of the contents thereof. Copies of new or renewal policies replacing any policies expiring during the Term, shall be delivered as aforesaid at least ten (10) days before the date of expiration, together with proof satisfactory to Landlord that the full premiums thereon have been paid. Premiums on policies shall not be financed in any manner whereby the lender, on default or otherwise, shall have the right or privilege of surrendering or cancelling the policies or reducing the amount of loss payable thereunder, provided, however, that premiums may be paid in installments.

(b) Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments as may be required for the purpose of obtaining the recovery of any such insurance moneys. Tenant shall promptly reimburse Landlord for any and all reasonable costs or expenses which Landlord may sustain or incur in connection therewith.

(c) Tenant shall not carry separate insurance (other than personal injury liability insurance) concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord and Master Landlord are included therein as named insureds with loss payable as provided in this Lease. Tenant immediately shall notify Landlord of the

carrying of any such separate insurance and shall cause the policies therefor or duplicate originals thereof to be delivered as required in this Lease.

(d) All property insurance policies as required by this Lease shall provide in substance that all adjustments for claims shall be made with Landlord and Tenant.

(e) Tenant shall not violate or permit to be violated any of the conditions or provisions of any insurance policy required hereunder, and Tenant shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies so that at all times companies of good standing, reasonably satisfactory to Landlord, shall be willing to write and continue such insurance.

(f) Each policy of insurance required to be obtained by Tenant as herein provided shall contain to the extent obtainable and whether or not an additional premium shall be payable in connection therewith (i) a provision that no act or omission or negligence of Tenant or any other named insured or violation of warranties, declarations or conditions by Tenant or any other named insured shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (ii) an agreement by the insurer that such policy shall not be cancelled or modified without at least thirty (30) days prior written notice to Landlord, (iii) an agreement that the coverage afforded by the insurance policy shall not be affected by the performance of any work in or about the Premises (or the Residential Portion) or the occupation or use of the Premises by Tenant for purposes more hazardous than those permitted by the terms of such policy, (iv) a waiver by the insurer of any claim for insurance premiums against Landlord or any named insured other than Tenant, and (v) with respect to each policy of insurance required to be obtained by Tenant under Section 6.02(a)(i), (iii) and (iv), a waiver of subrogation by the insurers of any right to recover the amount of any loss resulting from the negligence of Tenant, Landlord, their agents, employees or licensees.

(g) All liability insurance required to be provided and kept in force by Tenant under this Lease shall be written on an "Occurrence" basis, provided, however, that if (i) a basis other than such "Occurrence" basis shall be adopted throughout the insurance industry and (ii) such other basis shall be accepted by most prudent owners of like buildings and improvements, then Tenant may provide and keep in force liability insurance written on such other basis satisfactory to Landlord.

Section 6.04. The insurance required by this Lease, at the option of Tenant, may be effected by blanket or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant, provided that the policies otherwise comply with the provisions of this Lease and specifically allocate to the Premises the coverage required hereby, without possibility of reduction or coinsurance by reason of, or damage to, any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord certified copies or duplicate originals of such policies in place of the originals, with schedules thereto attached showing the amount of insurance afforded by such policies applicable to the Premises, and in addition, within thirty (30) days after the filing thereof with any insurance ratemaking body, copies of the schedule of all improvements affected by any such blanket or umbrella policy of insurance.

Section 6.05. Notwithstanding the provisions of this Article 6, on and after the City Commencement Date and so long as the City shall be the Tenant, Tenant shall not be obligated to provide any of the insurance required under this Article 6; provided, however, the inapplicability of the requirement to maintain such insurance policies shall not relieve Tenant of any of its other obligations or responsibilities under this Lease.

## ARTICLE 7.

### RESTORATION

Section 7.01. If, at any time on or after the Maintenance Commencement Date, all or any part of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen ("Loss or Damage by Casualty"), Tenant shall give to Landlord immediate notice thereof, (except that no notice shall be required if the estimated cost of repairs, alterations, restorations, replacements and rebuilding (collectively "Restoration") shall be less than the Minimum Amount and such Loss or Damage by Casualty does not affect the structural integrity of the Buildings, Landlord's Easement Equipment, or the Structural Supports, or involve work to the Residential Tower or on the exterior of the Buildings, or a change in the height, bulk or setback of the Buildings from the height, bulk or setback existing immediately prior to the Loss or Damage by Casualty, or in any other manner relate to the Master Development Plan or the Design Guidelines) and so long as Tenant has not exercised any right to terminate this Lease under this Article 7, Tenant (or Landlord if applicable under Section 7.03) shall repair, alter, restore, replace and rebuild (collectively, "Restore") the Premises in

accordance with all Requirements, as nearly as possible to the condition, quality and class of the Premises existing immediately prior to such occurrence, with such changes or alterations as Tenant, with the consent of Landlord, which consent shall not be unreasonably withheld, shall elect to make. All Restoration shall be performed at Tenant's sole cost and expense, whether or not the damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of such Restoration. The terms "Restore" and "Restoration" shall include repairs, alterations, restorations, replacements and rebuilding of the Premises in accordance with this Lease after a taking to which the provisions of Article 8 shall apply.

Section 7.02.

(a) Within sixty (60) days following any Loss or Damage by Casualty to the Premises, Tenant shall furnish Landlord with an estimate of the cost of the Restoration and, if Tenant elects to terminate this Lease as provided in Section 7.08(b), an estimate of the cost of the Casualty Termination Restoration, prepared by a licensed professional engineer or registered architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. Landlord may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Restoration or Casualty Termination Restoration, as the case may be. If there is any dispute as to the estimated cost of the Restoration or Casualty Termination Restoration, such dispute shall be resolved by arbitration in accordance with the provisions of Article 34.

(b) If the estimated cost of any Restoration or any Casualty Termination Restoration, determined as provided in Section 7.02(a), exceeds the net insurance proceeds, if any, available therefor, then, within ninety (90) days after the date of the Loss or Damage by Casualty requiring such Restoration or Casualty Termination Restoration, and in any event prior to the commencement of such Restoration (or with respect to a Casualty Termination Restoration, prior to the Casualty Termination Date), Tenant shall deliver evidence reasonably satisfactory to Landlord that funds (the "City Restoration Funds") in the amount of such excess are readily available to Landlord (in the case of a Casualty Termination Restoration or a Restoration under Section 7.03) or to Tenant (in the case of any other Restoration) to pay for the costs of the Restoration or Casualty Termination Restoration, as the case may be. Any insurance proceeds shall be deposited with Depository who shall hold such funds ("Insurance Funds" and together with the City Restoration Funds, the "Restoration Funds") in a segregated interest-bearing account.



Section 7.03. In the event of any Loss or Damage by Casualty to the Premises, (i) the Restoration of which affects the structural integrity of the Buildings or involves work on the exterior of the Buildings, or (ii) the estimated cost of the Restoration of which, determined as provided in Section 7.02(a), exceeds the Minimum Amount in the aggregate, Landlord shall Restore the Premises as provided in Section 7.01 with reasonable dispatch (subject to Unavoidable Delays) after (x) notice to Landlord of the Loss or Damage by Casualty, (y) receipt by Depository of the Insurance Funds therefor and by Landlord of evidence of that the City Restoration Funds are readily available to Landlord therefor, and (z) delivery by Tenant to Landlord of any plans and specifications that may reasonably be required to perform the Restoration. In no event shall Landlord be obligated to expend any amount in excess of the Insurance Funds and the City Restoration Funds available therefor in accordance with this Article 7, nor shall Landlord be obligated to proceed with any Restoration unless all of the Restoration Funds needed to complete the Restoration are readily available for such Restoration.

Section 7.04.

(a) In the event of any Loss or Damage by Casualty to the Premises other than as described in Section 7.03, Tenant shall perform such Restoration as provided in Section 7.01, with reasonable dispatch (subject to Unavoidable Delays). Subject to the provisions of this Section 7.04, Depository shall pay over to Tenant from time to time, upon the following terms, the Insurance Funds; provided, however, that Depository, before paying such moneys over to Tenant, shall be entitled to reimburse itself and Landlord therefrom to the extent, if any, of the necessary, reasonable and proper expenses (including reasonable attorney's fees) paid or incurred by Depository and Landlord in the collection of such monies. All Insurance Funds paid by Depository to Landlord or Tenant and all City Restoration Funds paid by the City to Landlord or Tenant, as herein provided, shall be used solely for the purpose of the Restoration until the Restoration is completed and fully paid for.

(b) Subject to the provisions of Section 7.05, the Restoration Funds shall be paid to Landlord or Tenant, as the case may be, in installments as the Restoration progresses, upon application to be submitted to Depository (with respect to Insurance Proceeds) or to the City (with respect to City Restoration Funds), showing the cost of labor and materials purchased and delivered to the Premises for incorporation in the Restoration, or incorporated therein since the last previous application, that are due and payable or have been paid by the party requisitioning the same. If as a result of any Restoration, any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or the Residential Portion or any part thereof, or if any public improvement lien

relating to the Restoration of the Premises or the Residential Portion is created or permitted to be created by Tenant and is filed against Landlord, or any assets of, or funds appropriated to, Landlord, Tenant shall not be entitled to receive any further installment of Restoration Funds until such lien is satisfied or discharged (by bonding or otherwise). Notwithstanding the foregoing, subject to the provisions of Section 7.05(b), the existence of any such lien shall not preclude Tenant from receiving any installment of Restoration Funds, provided such lien will be discharged with funds from such installment.

(c) Subject to the provisions of Section 7.05 and 7.06 and, if applicable, 8.05, the Restoration Funds shall be paid to Landlord or Tenant, as applicable (the "Requisitioning Party"), in installments as the Restoration progresses, less retainage equal to ten percent (10%) until completion of fifty percent (50%) of the Restoration, and thereafter, less retainage equal to five percent (5%) of the Restoration until completion of the Restoration, upon application submitted to Depository by the Requisitioning Party showing the cost of labor and materials purchased and delivered to the Premises for incorporation in the Restoration, or incorporated therein since the last previous application, due and payable or paid by the Requisitioning Party.

(d) Upon completion of and payment for the Restoration by Tenant, the balance of the Insurance Funds shall be paid over promptly to Tenant.

#### Section 7.05.

(a) It shall be a condition precedent to each payment made to Landlord or Tenant, as the case may be (the "Requisitioning Party"), as provided in Section 7.04 above that there shall be submitted to Depository (with respect to Insurance Funds) or to the City (with respect to City Restoration Funds) the certificate of the aforesaid engineer or architect approved by Landlord stating that (i) the sum then requested to be withdrawn either has been paid by the Requisitioning Party, or is due and payable to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate, (ii) no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds received by the Requisitioning Party, (iii) the sum then requested does not exceed the value of the services and materials described in the certificate, and (iv) the balance of the Restoration Funds will be

sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion.

(b) It shall be a condition precedent to each payment made to the Requisitioning Party that (i) there be furnished to the Landlord (when Tenant is the Requisitioning Party) or to Tenant (when Landlord is the Requisitioning Party) a certificate of a title insurance company reasonably satisfactory to the Landlord or Tenant, as the case may be, or other evidence reasonably satisfactory to such party, showing that there has not been filed (by reason of work performed for the benefit of the Premises) any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or the Residential Portion, or any public improvement lien with respect to the Premises or the Residential Portion or the Restoration, affecting Landlord, or the assets of, or funds appropriated to, Landlord, which has not been discharged of record (by bonding or otherwise) except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and if the Requisitioning Party is Tenant, (ii) at the time of making such payment, there is no existing and unremedied Event of Default on the part of Tenant.

#### Section 7.06.

(a) Tenant shall furnish to Landlord, at Tenant's sole cost and expense, at least thirty (30) Business Days prior to commencement of any Restoration, complete plans and specifications for the Restoration, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld, together with the approval thereof and any required permits issued by any Governmental Authority with respect to the Restoration. If such plans and specifications (including materials) are required for any Restoration (i) the estimated cost of which exceeds the Minimum Amount in the aggregate, determined as provided in Section 7.02(a), or (ii) any portion of which affects the structural integrity of the Buildings or involves work on the exterior of the Buildings or a change in the height, bulk or setback of the Buildings from the height, bulk or setback existing immediately prior to Loss or Damage by Casualty or in any other manner relates to the Residential Tower, Landlord's Easement Equipment, Structural Supports, Master Development Plan or the Design Guidelines, such plans and specifications (and materials) shall be subject to Landlord's prior approval and all of the foregoing shall be subject to Landlord's review and approval for substantial conformity with the Master Development Plan and the Design Guidelines. Such plans and specifications shall become the sole and absolute property of Landlord if for any reason this Lease shall be terminated. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of delivery of the plans and specifications by Tenant, and if Landlord shall not have notified Tenant of its determination within such period, it shall

be deemed to have determined that the proposed plans and specifications are satisfactory.

(b) In the event Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Section 7.06(a) with respect to, or which will in any way affect, the structural integrity or the exterior of the Buildings or the height, bulk or setback of the Buildings or which will affect the Residential Tower, Landlord's Easement Equipment, Structural Supports or compliance with the Design Guidelines or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which affect solely the interior of the Buildings and do not affect the structural integrity or the exterior of the Buildings or the height, bulk or setback of the Buildings or any portion of the Residential Tower, Landlord's Easement Equipment or Structural Supports, or the Master Development Plan or the Design Guidelines. Landlord shall review the proposed changes to determine whether or not they (i) conform to the Master Development Plan and the Design Guidelines and (ii) provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications, and shall approve such proposed changes if they do so conform and so provide. If Landlord determines that the proposed changes are not satisfactory in light of the above criteria, it shall so advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan or the Design Guidelines or do not provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within ten (10) Business Days of the date of delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant, and if Landlord shall not have notified Tenant of its determination within such ten (10) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory. Landlord shall not review portions of the approved plans and specifications which Landlord has previously determined to be satisfactory, provided same have not been changed by Tenant.

Section 7.07. Tenant shall deliver to Landlord, within ninety (90) days of the completion of any Restoration, a complete set of "as built" plans thereof certified to be complete and correct by a registered architect.

Section 7.08. (a) This Lease shall not terminate or be forfeited or be affected in any manner, and there shall be no reduction or abatement of the Rental payable hereunder, by reason of damage to or total, substantial or partial destruction of the Buildings or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Buildings had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

(b) Notwithstanding the provisions of Section 7.08(a), in the event that any Loss or Damage by Casualty to the Premises occurs and the estimated cost of Restoration thereof exceeds the Minimum Amount, Tenant may elect, at any time prior to the sixtieth day following such loss or damage, to terminate this Lease (a "Casualty Termination") on a date specified by Tenant ("Casualty Termination Date"), which date shall be no later than sixty days after the date of such notice. On or prior to the Casualty Termination Date, Tenant shall surrender the Premises to the Landlord and upon such surrender, Tenant's obligations under this Lease shall terminate, except for any obligations which are stated to survive termination of this Lease. Any Casualty Termination shall be conditioned upon receipt by Landlord of an assignment of all right, title and interest of Tenant in any insurance proceeds payable in respect of the such Loss or Damage by Casualty. Promptly following Landlord's receipt of such proceeds and any proceeds deposited with Landlord pursuant to Section 7.02(b) above, and, if applicable, Landlord's receipt of any plans and specifications required to perform any Casualty Termination Restoration, Landlord shall (subject to any Unavoidable Delays), at Landlord's option, (i) demolish the Premises and remove all debris from the School Land, or (ii) perform such repairs, alterations and restorations (collectively, "Casualty Termination Restoration") to the Premises as may be required for the continued maintenance of the Residential Portion, including its continued compliance with all Requirements. Any portion of the Restoration Funds remaining on deposit after completion of such demolition or Casualty Termination Restoration, as the case may be, shall be paid to the Tenant.

(c) The provisions of Article 7 shall survive the termination of this Lease. To the extent that any of the terms or provisions of this Section 7.08 conflicts with any other terms or provisions of this Article 7, the terms and provisions of this Section 7.08 shall control.

Section 7.09. If all or any part of the Residential Portion shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, then Landlord shall at Landlord's option and at no cost to Tenant, (i) demolish the Residential Portion and thereafter remove all debris from the Residential Land, or (ii) perform such repairs, alterations and restorations to the Residential Portion as may be required so that the Residential Portion shall be a complete, operable, self-contained building (which may be smaller in height and dimension); provided that such demolition or restoration will not unreasonably interfere with the operation of the Premises as a public school and will not cause the Premises to be in violation of any applicable Requirements.

## ARTICLE 8.

### CONDEMNATION

#### Section 8.01.

(a) If the whole or substantially all of the Premises shall be taken (excluding a taking of the fee interest in the Premises, or any leasehold interest superior to that of the Tenant's, if after such taking, Tenant's rights under this Lease are not affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking.

(b) The term "substantially all of the Premises" shall mean such portion of the Premises as, when so taken, would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws, building regulations then existing or prevailing or the Master Development Plan, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed or performed by Tenant, permit the Restoration of the Premises so as to constitute a complete, operational public school comparable to the public school operated on the Premises before such taking. If there be any dispute as to whether or not "substantially all of the Premises" has been taken, such dispute shall be resolved by arbitration in accordance with the provisions of Article 34.

(c) If the whole or substantially all of the Premises shall be taken or condemned as provided in Section 8.01(a), the award, awards or damages in respect thereof if not separately apportioned with respect to the Land (it being agreed that for purposes of such apportionment, the Land shall be considered as unimproved and unencumbered by this Lease or the Master Lease), shall be divided between the Landlord and Tenant so that there shall be paid to Landlord so much of the award which is for or attributable to the value of the Land, considered as unimproved and unencumbered by this Lease or the Master Lease, and Tenant shall receive the balance of the award, if any. If there be any dispute as to which portion of the award is attributable to the Land, such dispute shall be resolved by arbitration in accordance with the provisions of Article 34.

Section 8.02. For purposes of this Article 8, the "date of taking" shall be deemed to be the earlier of (i) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (ii) the date on which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 8.03.

(a) If less than substantially all of the Premises shall be so taken, this Lease and the Term shall continue as to the portion of the Premises remaining without abatement of the Base Rent or diminution of any of Tenant's obligations hereunder, and Tenant (or Landlord, if applicable under Section 7.03) shall Restore, at Tenant's sole cost and expense, whether or not the award or awards, if any, shall be sufficient for the purpose, such part of the Premises not so taken so that the latter shall be a complete, operable, self-contained architectural unit in good condition and repair. Such Restoration, and all plans and specifications for such Restoration, shall be governed by and be subject to the provisions of Article 7, except as otherwise expressly provided in this Article 8, as if the Restoration as a result of the taking governed by this Article 8 were a Restoration after Loss or Damage by Casualty to the Premises. Any such plans and specifications shall become the sole and absolute property of the Landlord if for any reason this Lease shall be terminated. In the event of any taking described in this Section 8.03, the entire award for or attributable to the Land, considered as unimproved and unencumbered by this Lease, determined as provided in Section 8.01(c), shall be paid to Landlord, and the balance of the award, if any, shall be paid to Depository for application to the cost of Restoration of the part of the Premises not so taken. Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

(b) In the case of any Restoration required by the terms of Section 8.03(a), the cost of which, as determined in the manner set forth in Section 7.02(a) as if the date of the taking were the date of Loss or Damage by Casualty to the Premises, exceeds the condemnation award (less all necessary and proper expenses paid or incurred by Landlord in connection with the condemnation proceedings), Tenant shall within ninety (90) days following the date of such taking, and in any event prior to the commencement of such Restoration, deliver to Landlord evidence reasonably satisfactory to Landlord that funds in the amount of such excess are readily available to Landlord (in the case of Restoration under Section 7.03) or to Tenant (in the case of any other Restoration) to pay for the costs of the Restoration. Any award deposited with Depository, together with any other monies made available to pay for the cost of Restoration pursuant to this Section 8.03(b) (collectively, the "Taking Restoration Funds"), shall be used for the purpose of Restoration until the Restoration is completed and fully paid for. In no event shall Landlord be obligated to expend for any Restoration under this Article 8 an amount in excess of such Taking Restoration Funds deposited with Depository pursuant to this Article 8. Any balance of the Taking Restoration Funds remaining after completion of and payment for the Restoration shall be paid over to Tenant.

Section 8.04. If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that:

(a) if the taking is for a period not extending beyond the Term and if such award or payment is made less frequently than in monthly installments, the same shall be paid to and held by Depository as a fund which Landlord shall apply from time to time to the payment of Rental, except that, if such taking results in changes or alterations in the Premises which would necessitate an expenditure to Restore the Premises to its former condition, then, a portion of such award or payment considered by Landlord, in its reasonable opinion, as appropriate to cover the expenses of the Restoration shall be applied toward the Restoration of the Premises to its former condition, substantially in the same manner and subject to the same conditions as provided in Section 8.03; and any portion of such award or payment which shall not be required pursuant to this Section 8.04(a) to be applied to the Restoration of the Premises or to the payment of Rental until the end of the Term (or, if the taking is for a period terminating prior to the



end of the Term, until the end of such period), shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, such award or payment shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to Depository as a fund which Landlord shall apply in accordance with the provisions of Section 8.04(a), provided, however, that the amount of any award or payment allowed or retained for the Restoration of the Premises and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to such Restoration.

Section 8.05. In case of any action by any Governmental Authority, not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abuts, this Lease shall continue in full force and effect without reduction or abatement of Rental and the award or other compensation therefor shall be paid to Landlord, to the extent of the amount, if any, necessary to restore any portion of the streets, Utilities or School Sidewalks to their former condition and any balance remaining shall be paid to Tenant.

Section 8.06. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 8.07. Landlord and Tenant shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 8.08. Notwithstanding anything to the contrary contained in this Article 8, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant including any Equipment and for relocation expenses of Tenant, and all awards and damages in respect thereof shall belong to Tenant, and Landlord hereby waives any and all claims to any part thereof; provided, however, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 8.

Section 8.09. In the event of any permanent or temporary taking of all or any part of the Residential Portion, all awards and damages in respect thereof shall belong to Landlord, and Tenant hereby waives any and all claims to any part thereof.

## ARTICLE 9.

### ASSIGNMENT, SUBLETTING, ETC.; AUTHORIZATION FOR SUBLEASE

Section 9.01. Neither this Lease nor any interest of Tenant in this Lease, shall be sold, assigned, or otherwise transferred, whether by operation of law or otherwise, nor shall Tenant sublet the Premises or any part thereof or, except as otherwise specifically provided herein, permit the Premises or any part thereof to be used or occupied by anyone other than Tenant, nor shall Tenant mortgage, pledge, encumber or otherwise hypothecate this Lease or the Premises or any part thereof in any manner whatsoever, without the consent of Landlord in each case, which consent may be withheld by Landlord for any reason whatsoever.

Section 9.02. Landlord hereby authorizes Tenant to enter into the Sublease with Subtenant and to perform the obligations and exercise the rights of landlord under the Sublease, provided that Tenant may not alter or amend the Sublease without Landlord's written consent.

Section 9.03. Tenant shall use its best efforts to enforce the obligations of Subtenant under the Sublease. Tenant shall notify Landlord of any failure of Subtenant to comply with the obligations of Subtenant under the Sublease. Notwithstanding any provision hereof to the contrary, Tenant shall not be deemed to be in default hereunder in the event that (i) a default is the result of any act of, or failure to act by, Subtenant under the Sublease, (ii) such act of, or failure to act by, Subtenant under the Sublease is a default under the Sublease or otherwise gives rise to Tenant's right to terminate the Sublease under Section 14.03 of the Sublease, and (iii) Tenant promptly and diligently exercises all such rights and remedies against the Subtenant as Landlord shall direct. If, but for the provisions of the preceding sentence, Tenant would be in default under this Lease as a result of any act of, or failure to act by, Subtenant, and such act or failure to act by Subtenant is a default under the Sublease, but Tenant chooses in its reasonable business judgment not to enforce against Subtenant any or all of Tenants' rights contained under the Sublease, Landlord may specifically direct Tenant to exercise specific rights and remedies against the Subtenant in accordance with the provisions of the Sublease and Tenant shall be obligated to exercise such specified rights and remedies against the Subtenant in accordance with the provisions of the Sublease. In

the event Tenant fails to exercise such rights and remedies, Landlord shall have the right to exercise such rights and remedies in Landlord's name or in the name of Tenant and at Tenant's sole cost and expense, and Tenant hereby grants to Landlord an irrevocable power of attorney coupled with an interest and granted for valuable consideration to execute any documents in Tenant's name in connection with the exercise of such rights and remedies against the Subtenant.

Section 9.04. If the Sublease is terminated or Subtenant is dispossessed by summary proceedings or otherwise as provided in the Sublease (such termination or dispossession, a "Sublease Default Termination"), then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as provided in Section 23.03(a).

Section 9.05. Nothing set forth in this Article 9 shall excuse any party to the Development Agreement from the performance of any obligation under the Development Agreement (whether or not such default is a result of a default by Subtenant under the Sublease) or a default by Tenant in the performance of any of the terms, covenants and conditions hereunder which default is not the result of any failure of the Subtenant to perform its obligations under the Sublease.

Section 9.06. Notwithstanding anything to the contrary contained herein, on the School Project Bonds Termination Date, the Subtenant shall be deemed to have assumed all of the rights and obligations of the Fund hereunder.

## ARTICLE 10.

### CONSTRUCTION AND OWNERSHIP OF BUILDINGS AND EQUIPMENT; CONSTRUCTION OF UTILITIES AND SCHOOL SIDEWALKS

Section 10.01. Landlord and Tenant acknowledge and agree that the Buildings will be constructed on the School Land in accordance with the provisions of the Development Agreement.

Section 10.02. The Buildings, and the materials to be incorporated in the Buildings at any time prior to or during the Term, shall, upon purchase of materials and at all times thereafter until the expiration or earlier termination of this Lease, constitute the property of Tenant, and upon construction of the Buildings or the incorporation of such materials therein, title thereto shall vest in Tenant, subject to the terms and conditions of this Lease. Except as specifically provided in the Development Agreement (i) Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials or other Person in connection with the

purchase of any such materials, (ii) Tenant shall have no obligation to pay any compensation to Landlord by reason of its acquisition of title to such materials and Buildings, and (iii) Landlord shall have no obligation with respect to the storage or care of such materials or the Buildings.

Section 10.03. Upon the expiration or earlier termination of this Lease, pursuant to the terms hereof or by operation of law or otherwise, the Buildings, and all materials and Equipment (other than furniture, furnishings and other items of personal property which are placed in the Premises and used by Tenant in connection with its use of the Premises as a public school and whether or not any of the same is attached to the Premises ("Tenant's Property")) incorporated therein shall become vested in Landlord without the necessity of the execution of any additional instruments and without the payment by Landlord of any consideration therefor and Tenant shall have no right to move any of the foregoing from the School Land demised hereby.

Section 10.04. Landlord shall complete or cause to be completed the construction of the Utilities and the School Sidewalks.

## ARTICLE 11.

### REPAIRS

Section 11.01. Tenant shall take good care of the Premises, including, without limitation, roofs, foundations, curbs and appurtenances thereto, all Equipment, all sidewalks, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), sidewalk hoists, water, sewer and gas connections, which are located on or service the Premises (unless the City or a public utility company is obligated to maintain or repair same), and shall put, keep and maintain the Premises in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise; provided, however that Landlord shall, at Landlord's sole cost and expense, maintain and repair (except for repairs resulting from Tenant's negligence or willful misconduct) the (x) water, sewer and gas pipes and mains (but not connections) which service the Premises (the "Utilities") but are located off the Premises (unless the City or a public utility company or any other Person is obligated to maintain or repair same) and (y) the School Sidewalks. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 11.01, the term "repairs" shall include all necessary

replacements, alterations and additions. All repairs made by Tenant and Landlord shall be equal in quality and class to the original work and shall be made in compliance with (a) all Requirements of Governmental Authorities (including, but not limited to, Local Law No. 5, 1973, as amended), (b) the New York Board of Fire Underwriters or any successor thereto, and (c) the Building Code of the City, as then in force. The obligations of Landlord to maintain and repair the Utilities shall terminate in the event that and as of the date that the same shall be dedicated to the City or to the appropriate utility company, as the case may be, and the City or the appropriate utility company, as the case may be, shall commence performance of such obligations in respect of same.

Section 11.02. Tenant shall keep clean and free from dirt, snow, ice, rubbish, defacement, obstructions and encumbrances, the sidewalks adjacent to the Premises (the "School Sidewalks"), grounds, chutes and sidewalk hoists comprising, in front of, or adjacent to, the Premises.

Section 11.03. Except as expressly provided in the Development Agreement or in Articles 7 and 8 or Section 11.01 hereof, Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises, and Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement, replacement or repair to, nor to demolish, any Buildings. Tenant shall not clean nor require, permit, suffer nor allow any window in the Premises to be cleaned from the outside in violation of the Labor Law or any other applicable Requirement.

## ARTICLE 12.

### CHANGES, ALTERATIONS AND ADDITIONS

Section 12.01. Tenant shall not design, construct, equip, demolish, replace or materially alter the Buildings, or any part thereof, or make any addition thereto, whether voluntarily or in connection with repairs or Restorations required by this Lease, (collectively, "Capital Improvement"), unless Tenant shall comply with the following requirements and, if applicable, with the additional requirements set forth in Section 12.02; provided, however, that for any period during which Landlord is administering the development of the Project (as defined under the Development Agreement), the Capital Improvements contemplated under the Development Agreement shall not be subject to the requirements set forth in this Article.

(a) No Capital Improvement shall be undertaken until Tenant shall have procured from all Governmental Authorities and paid for all permits, consents, certificates and approvals for the proposed Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement (collectively, "Improvement Approvals"), and Landlord shall not unreasonably refuse to join or otherwise cooperate in the application for any such Improvement Approvals, provided such application is made without cost or expense to Landlord. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord prior to commencement of the proposed Capital Improvement.

(b) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Unavoidable Delays) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) the Master Development Plan, the Design Guidelines and, if required pursuant to Section 12.02(a) or (b), the plans and specifications for such Capital Improvement as approved by Landlord, (iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, and (iv) all other Requirements.

(c) If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof or the Residential Portion or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

#### Section 12.02.

(a) In the event that (i) the estimated cost of any proposed Capital Improvement shall exceed the Minimum Amount, either individually or in the aggregate with other Capital Improvements constructed in any twelve (12) month period during the Term, or (ii) any portion of the Capital Improvement involves structural work or work involving the Residential Tower, Landlord's Easement Equipment, Structural Supports or the exterior of the Buildings or a change in the height, bulk or setback of the Buildings from the height, bulk or setback existing immediately prior to the Capital Improvement, or in any other manner relates to the Master Development Plan or the Design Guidelines, Tenant shall furnish to Landlord, at least thirty (30) Business Days prior to commencement of the proposed Capital Improvement, complete plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or a registered architect approved by Landlord, which approval shall not be unreasonably withheld; all

such plans and specifications and materials for any such Capital Improvement affecting the Residential Tower, Landlord's Easement Equipment, Structural Supports, structural integrity or exterior of the Buildings shall be subject to Landlord's prior approval and all of the foregoing to be subject to Landlord's review and approval for conformity with the Master Development Plan and the Design Guidelines. Such plans and specifications shall become the sole and absolute property of Landlord if for any reason this Lease shall be terminated. Each review by Landlord shall be carried out within fifteen (15) Business Days of the delivery of the plans and specifications by Tenant, and if Landlord shall not have notified Tenant of its determination within such period, it shall be deemed to have determined that the proposed plans and specifications are satisfactory.

(b) In the event that Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Sections 12.02(a) with respect to, or which will in any way affect, any aspect of the Residential Tower, Landlord's Easement Equipment, Structural Supports, structural integrity or exterior of the Buildings or the height, bulk or setback thereof or compliance with the Design Guidelines or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which affect solely the interior of the Buildings. Landlord shall review the proposed changes to determine whether or not they (i) conform to the Master Development Plan and the Design Guidelines and (ii) provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications and shall approve such proposed changes if they do so conform and so provide. If Landlord determines that the proposed changes are not satisfactory in light of the above criteria, it shall so advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan or the Design Guidelines or do not provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications. Within fifteen (15) Business Days after Landlord shall have so advised Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant, and if Landlord shall not have notified Tenant of its determination within such period, it shall be deemed to have determined that the proposed changes are satisfactory. Landlord shall not review portions of the approved plans and specifications which Landlord has previously determined to be satisfactory, provided the same have not been changed by Tenant.

Section 12.03. All Capital Improvements (i) costing more than the Minimum Amount or (ii) being of the kind referred to in Section 12.02(a)(ii) shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord. Within ninety (90) days of completion of any such Capital Improvement Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement, together with a permanent Certificate of Occupancy therefor issued by the New York City Department of Buildings, to the extent a modification thereof was required.

Section 12.04. Title to all additions, alterations, improvements and replacements made to the Premises, including, without limitation, the Capital Improvements, shall forthwith vest in Tenant as provided in Section 10.02, subject to the rights of Landlord as provided in Section 10.03.

#### ARTICLE 13.

##### REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES; COMPLIANCE WITH MASTER LEASE

Section 13.01. Tenant promptly shall comply with any and all applicable laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders, including, without limitation, Environmental Laws, in effect as of the Commencement Date or thereafter (collectively, "Requirements") without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities existing as of the Commencement Date or thereafter created, and of any and all of their departments and bureaus, and of any applicable Fire Rating Bureau or other body exercising similar functions, affecting the Premises or any street, avenue or sidewalk dedicated to the City comprising a part or in front thereof or any vault in or under the same, or requiring the removal of any encroachment, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, and without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put. Notwithstanding the foregoing, Tenant shall not be required to comply with (i) Requirements of Landlord except as otherwise expressly provided in this Lease or (ii) Requirements of the City when not acting solely in its capacity as a Governmental Authority. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.



Section 13.02. Tenant shall have the right to contest the validity of any Requirements or the application thereof. Compliance with any such contested Requirements may be deferred by Tenant upon condition that if the cost shall exceed the Minimum Amount, before instituting any such proceeding, Tenant shall furnish to Landlord a bond, cash or other security satisfactory to Landlord in an amount equal to the amount by which the cost of compliance exceeds the Minimum Amount, securing compliance with the contested Requirements and payment of all interest, penalties, fines, fees, and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after notice (actual or constructive) to Tenant of the applicability of such matters to the Premises and shall be prosecuted to final adjudication with reasonable dispatch. Notwithstanding the foregoing, Tenant promptly shall comply with any such Requirements and compliance shall not be deferred if such non-compliance shall result in the imminent loss or forfeiture of the Premises or any part thereof or the Residential Portion or any part thereof, or if Landlord shall be in danger of being subject to civil or criminal liability or penalty by reason of non-compliance therewith. Landlord shall cooperate with Tenant in any such contest to such extent as Tenant may reasonably request, it being understood, however, that Landlord shall not be subject to any liability or the payment of any costs or expense in connection with any proceeding brought by Tenant.

Section 13.03. Tenant shall not (to the extent reasonably within Tenant's control) cause or create or permit to exist or occur any condition or event relating to the Premises which would, with or without notice or passage of time, result in an event of default under the Master Lease. Tenant shall perform all of Landlord's obligations as tenant under the Master Lease, as of the date hereof, relating to the maintenance and operation of the Premises (unless, in accordance with the terms of this Lease or the Development Agreement, Landlord is specifically obligated to perform any such obligation). For purposes of determining the obligations under the Master Lease relating to the Premises, the Buildings shall be deemed a "Civic Facility" (as defined in the Master Lease) which is dedicated to and accepted by the City.

#### ARTICLE 14.

##### EQUIPMENT

Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items at least equal in utility and value to the Equipment being replaced. Notwithstanding the foregoing, Tenant shall not be required to replace any Equipment which performed a function which has become

obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises.

## ARTICLE 15.

### DISCHARGE OF LIENS; BONDS

Section 15.01. Subject to the provisions of Section 15.02 hereof, except as otherwise expressly provided herein, Tenant shall not create or permit to be created as a result of the acts or omissions of Tenant, or any agent, employee, licensee or invitee of Tenant, any lien, encumbrance or charge upon the Premises or any part thereof, or the Residential Portion or any part thereof, or the Project Area or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord or Master Landlord, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord or Master Landlord in the Premises or any part thereof, or the Residential Portion or any part thereof, might be impaired. Tenant may finance (and enter into equipment finance leases of) any of Tenant's Property.

Section 15.02. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by and for the benefit of Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 15.01 against the Premises or any part thereof, or the Residential Portion or any part thereof, or the Project Area or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord or Master Landlord, Tenant, within sixty (60) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional ten (10) days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, shall constitute Rental and shall be paid by Tenant to Landlord within ten (10) days after demand. Notwithstanding the foregoing provisions of this Section 15.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and Landlord in its reasonable

judgment has determined that the existence of such lien is not likely to result in any foreclosure or civil or criminal penalties.

Section 15.03. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, the Residential Portion or any part thereof, or the Project Area or any part thereof, or any assets of, or funds appropriated to, Landlord or Master Landlord.

Section 15.04. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or Master Landlord or of any interest of Landlord or Master Landlord in the Premises or any part thereof or the Residential Portion or any part thereof.

#### ARTICLE 16.

##### NO REPRESENTATIONS BY LANDLORD; POSSESSION

Section 16.01. Tenant acknowledges that Tenant is fully familiar with the School Land, the Title Matters, the Requirements, the Master Lease, the Master Development Plan, the Settlement Agreement and the Design Guidelines. Except as otherwise expressly set forth in this Lease or the Development Agreement, (i) no representations, statements or warranties, express or implied, have been made by or on behalf of Landlord in respect of the School Land, the status of title thereto, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, or the use that may be made of the School Land, (ii) Tenant has relied on no such representations, statements or warranties, and (iii) Landlord shall in no event whatsoever be liable for any latent or patent defects in the Land.

Section 16.02. Landlord shall deliver to Tenant possession of the School Land on the Commencement Date, vacant and free of occupants and tenancies, subject to the Title Matters and the terms of the Development Agreement and this Lease.

## ARTICLE 17.

### LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 17.01. Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Premises, and their appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of the Buildings (including, but not limited to, any of the common areas within the Buildings, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or the Residential Portion or which may arise from any other cause whatsoever, except to the extent any of the foregoing shall have resulted from the negligence or willful misconduct of Landlord, its officers, agents, employees or licensees; nor shall Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the Project Area other than the Premises, or of any agent, representative, employee, contractor or servant of such other tenant. Notwithstanding anything in this Lease to the contrary, in no event shall any of the parties to this Lease be liable for any consequential damages suffered by any other party to this Lease.

Section 17.02. Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises or the Residential Portion, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditament by anybody, or caused by any public or quasi-public work except to the extent any of the foregoing shall have resulted from the negligence or willful misconduct of Landlord, its officers, agents, employees or licensees.

Section 17.03. In addition to the provisions of Sections 17.01 and 17.02, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, (a) arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, forming part of the School Land or in the Project Area, or (b) arising out of any other cause, including the negligence or willful misconduct of Landlord, its officers, agents, employees or licensees, if and to the extent

such injury or damage is covered by any insurance policy carried by Tenant.

Section 17.04. In no event shall Tenant be liable to Landlord or to any other Person for any injury or damage to Landlord or to such other Person happening on, in or about the Premises and its appurtenances which may be caused by the Utilities, the construction or repair by Landlord of the School Sidewalks, or any Pre-existing Environmental Materials, except to the extent that the same shall have been caused in whole or in part by the negligence or willful misconduct of Tenant or any employee, agent, servant or contractor of Tenant or Subtenant.

#### ARTICLE 18.

##### INDEMNIFICATION OF LANDLORD AND OTHERS

Section 18.01. From and after the Maintenance Commencement Date, Tenant, to the fullest extent permitted by law, shall indemnify and save harmless Landlord and its agents, directors, officers and employees (collectively, the "Indemnitees") from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or willful misconduct of any of the Indemnitees:

(a) construction of the Buildings or any other work or thing done in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part of the Premises or adjacent thereto, provided such indemnity with regard to streets, alleys, sidewalks, curbs, vaults, passageways and other space is limited to an alteration, repair, condition, or maintenance of any street, alley, sidewalk, curb, vault, passageway or other space done or performed by Tenant or any agent, contractor, servant or employee of Tenant or which Tenant is obligated to do or perform or which results from use by Tenant or any agent, contractor, servant or employee of Tenant (provided however such indemnity shall not relate to any Pre-existing Environmental Materials);

(c) any negligent or tortious act or failure to act, while engaged in the course of employment for Tenant, by any agent, contractor, servant or employee of Tenant within the Residential Portion or elsewhere within the Project Area;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or in, or on about any sidewalk or vault adjacent to the Premises unless such sidewalk or vault is solely within the control of Landlord or a utility company, provided, however, such indemnity shall not apply to any such accident, injury or damage caused by, arising out of or relating to any Pre-existing Environmental Materials;

(e) any material failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with (other than any failure to perform a covenant, agreement, term or condition which results in a default under any of clauses (a), (b), (c), (d), (f), (g), (h) or (i) of this Section 18.01;

(f) any lien or claim which may have arisen out of any act of Tenant or any agent, contractor, servant or employee of Tenant against or on the Premises, the Residential Portion or any other portion of the Project Area, or any lien or claim created or permitted to be created by Tenant in respect of the Premises or the Residential Portion or against any assets of, or funds appropriated to, any of the Indemnitees under the laws of the State of New York or of any other Governmental Authority or any liability which may be asserted against any of the Indemnitees with respect thereto provided, however, such indemnity shall not apply to any such liens or claims caused by, arising out of or relating to any Pre-existing Environmental Materials;

(g) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) any tax attributable to the execution, delivery or recording of this Lease other than any real property transfer gains tax or other transfer tax which may be imposed on Landlord;

(i) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Articles 4 and 13 hereof; or

(j) any action taken by any Person pursuant to any Environmental Law or under common law, pertaining to Hazardous Materials, or in any manner arising out of or related to the presence, use, generation, storage, disposal or transport of any Hazardous Materials found in, on or under, affixed to or emanating from the Premises, provided, however, such indemnity shall not apply to any such action caused by, arising out of or relating to

any Pre-existing Hazardous Materials or any Hazardous Materials located on, affixed to or emanating from the Residential Portion.

Section 18.02. The obligations of Tenant under this Article 18 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 18.03. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnities in Section 18.01, then, upon prompt notice, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select, and Landlord shall approve, which approval shall be deemed given if such counsel is the Corporation Counsel of the City. In such event, Tenant shall control all decisions in respect of the litigation and settlement of such claims. In the event such claim, action or proceeding is covered by insurance and Tenant's insurer refuses to pay all or any portion of the fees and disbursements of any attorneys separately retained by Landlord, Landlord shall pay such fees and disbursements or such portion as shall not be paid by Tenant's insurer. The indemnification obligations imposed upon Tenant under Section 18.01 shall not apply to any settlement separately agreed to by Landlord without the consent of the Corporation Counsel and the Comptroller of the City nor if Landlord retains its own attorneys and such retention will materially impair or materially diminish Tenant's insurance coverage and Landlord has been so advised in writing by Tenant's insurer.

Section 18.04. The provisions of this Article 18 shall survive the Expiration Date with respect to actions or the failure to take any actions arising prior to the Expiration Date.

Section 18.05. Notwithstanding any term, covenant or provision contained in this Lease to the contrary, in no event shall Tenant be liable to Landlord for any injury or damage to any property of Landlord or of any other Person or to the Premises, arising out of any cause, including the negligence or willful misconduct of Tenant, its officers, agents, employees or licensees, if and to the extent such injury or damage is covered by any insurance policy.

## ARTICLE 19.

### RIGHT OF INSPECTION, ETC.

Section 19.01. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency, in which event Landlord shall reasonably attempt to notify Tenant prior to such entry) for the purpose of (a) inspecting the same, (b) determining whether or not Tenant is in compliance with its obligations hereunder, and (c) making any necessary repairs to the Premises and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work, provided that, except in any emergency, Landlord shall have given Tenant notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within one hundred eighty (180) days after the giving of such notice (subject to Unavoidable Delays), or if such repairs or such work cannot reasonably be completed during such one hundred eighty (180) day period, to have commenced and be diligently pursuing the same (subject to Unavoidable Delays).

Section 19.02. Nothing in this Article 19 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Tenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, the provisions of Section 20.02 shall apply thereto, and such work or repairs shall be commenced and completed in a good and workmanlike manner and with reasonable diligence, subject to Unavoidable Delays, and in such a manner as not to cause the Premises to be in violation of any applicable Requirements or to unreasonably interfere with the conduct of a public school.



## ARTICLE 20.

### LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 20.01. Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform any obligation required to be performed by Tenant hereunder on Tenant's behalf if Tenant at any time shall be in Default, after notice thereof and after expiration of applicable grace periods, if any, provided under this Lease for Tenant to cure or commence to cure the same.

Section 20.02. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any obligation pursuant to Section 20.01 shall be paid by Tenant to Landlord within ten (10) days after demand. Any payment or performance by Landlord pursuant to Section 20.01 shall not be nor be deemed to be a waiver or release of breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of damage to or destruction of the Premises.

## ARTICLE 21.

### NO ABATEMENT OF RENTAL

Except as may be otherwise expressly provided herein there shall be no abatement, off-set, diminution or reduction of Rental payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances.

## ARTICLE 22.

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 22.01. Subject to the provisions of law and this Lease, Tenant shall occupy the Premises solely as a public school, in accordance with the Certificate or Certificates of Occupancy for the Premises, the Master Development Plan and the Design Guidelines, and for no other use or purposes except as specified in this Lease. Landlord and Tenant recognize the normal and reasonable use of the Premises as a public school will result in noise and conduct consistent with such use during normal school hours.

Section 22.02. Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) by reason of odors, fumes, dust, smoke noise or other pollution, or for any purpose or in any way in violation of the Certificates of Occupancy or of any governmental laws, ordinances, requirements, orders, directions, rules or regulations, or which may make void or voidable any insurance then in force on the Premises or the Residential Portion, or, without Landlord's consent, for any use which requires a variance, waiver or special permit under the Zoning Resolution of the City as then in effect. Tenant shall take, immediately upon the discovery of any such unpermitted, unlawful or illegal use, all necessary actions, legal and equitable, to compel the discontinuance of such use.

Section 22.03. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

## ARTICLE 23.

### EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 23.01. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to pay any installment of Rental other than Base Rent, or any part thereof, when the same shall become due and payable and such failure shall continue for thirty (30) days after notice from Landlord to Tenant;

(b) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred, mortgaged or encumbered without Landlord's approval;

(c) if a levy under execution or attachment shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days;

(d) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease and such failure shall continue for a period of thirty (30) days (or such longer period as shall be expressly provided in this Lease) after notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period (or such longer period as shall be expressly provided in this Lease), in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion);

(e) if Tenant shall abandon the Premises;

or

(f) if Tenant shall fail to observe or perform one or more of the material terms, conditions, covenants or agreements contained in the Development Agreement, and such failure shall continue after any notice and cure period provided therein, or if the Development Agreement shall be terminated due to a default by Tenant thereunder.

Section 23.02. If an Event of Default shall occur, Landlord may proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

#### Section 23.03.

(a) If (i) any Event of Default shall occur and Landlord, at any time thereafter, at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than ten (10) days after the date of such notice, or (ii) a Sublease Default Termination shall occur, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate respectively; (x) as of the date specified in the notice given pursuant to this Section 23.03(a), or (y) as of the date of

the Sublease Default Termination, in each case, as if the same were the date herein definitely fixed for the expiration of the Term and Tenant immediately shall quit and surrender the Premises.

(b) If this Lease shall be terminated as provided in Section 23.03(a), Landlord, without notice, may re-enter and repossess the Premises without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings or otherwise.

Section 23.04. If this Lease shall be terminated as provided in Section 23.03(a) or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 23.03(b) hereof, Tenant shall pay to Landlord all Rental payable by Tenant under this Lease to the date upon which this Lease and the Term shall have expired and come to an end or to the date of re-entry upon the Premises by Landlord, as the case may be.

Section 23.05. Notwithstanding anything contained in this Lease to the contrary, no termination of this Lease pursuant to Section 23.03(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 23.03(b) and 23.04, shall relieve Tenant of its liabilities and obligations under Article 7 and Article 8 to restore the Premises, or Article 18 to indemnify Landlord and the other Indemnities, or under Article 31, with respect to Tenant's surrender of the Premises, all of which shall survive such termination, repossession or reletting.

Section 23.06. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or other sums payable by Tenant to Landlord pursuant to this Article 23, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no Event of Default by Tenant and termination.

Section 23.07. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments

on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 23.08. Except as otherwise expressly provided herein or as prohibited by applicable law, Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease are not restricted to their technical legal meaning.

Section 23.09. (a) No failure by Landlord or any prior Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall still continue in full force and effect with respect to any other than existing or subsequent breach thereof.

(b) No failure by Tenant to insist upon the strict performance of any covenant, agreement, term or condition of this Lease to be performed by Landlord or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Landlord, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Tenant. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall still continue in full force and effect with respect to any other than existing or subsequent breach thereof.

Section 23.10. (a) In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law, Tenant waives any

requirement for the posting of bonds or other security in any such action.

(b) In the event of any breach or threatened breach by Landlord of any of the covenants, agreements, terms or conditions contained in this Lease, Tenant shall have the right to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute. To the extent permitted by law, Landlord waives any requirement for the posting of bonds or other security in any such action.

Section 23.11. (a) Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

(b) All rights and remedies of Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 23.12. (a) Tenant shall pay to Landlord all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action of proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant also shall pay to Landlord all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, if and to the extent that Landlord shall prevail in any such action and all such costs, expenses, and reasonable attorneys' fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid shall be paid by Tenant to Landlord within thirty (30) days after demand by Landlord.

(b) Landlord shall pay to Tenant all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Tenant in any action or proceeding to which Tenant may be made a party by reason of any act or omission of Landlord. Landlord also shall pay to Tenant all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Tenant in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Tenant against Landlord on account of the provisions hereof, if and to the extent that Tenant shall prevail in any such action and all such costs, expenses, and reasonable attorneys' fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by Tenant against Landlord on or under this Lease. All of the sums paid or obligations incurred by Tenant as aforesaid shall be paid by Landlord to Tenant within thirty (30) days after demand by Tenant.

#### ARTICLE 24.

##### NOTICES

Section 24.01. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication shall or may be given to or served upon one of the parties by any of the others, and whenever any of the parties shall desire to give or serve upon any of the others any notice, demand, request, consent, approval, or other communication with respect hereto or the Premises or the Residential Portion, each such notice, demand, request, consent, approval, or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) if by Landlord, by delivering or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested, addressed to the Fund at 1 28-11 Queens Plaza North, Long Island City, New York 11101, Attention: Executive Director or to such other address(es) and attorneys as the Fund may from time to time designate by notice given to Landlord as aforesaid, and to the City addressed to the Mayor at City Hall, New York, New York, with a copy to Corporation Counsel of the City at 100 Church Street, New York, New York 10007, or to such other address(es) and attorneys as the City may from time to time designate by notice given to Landlord as aforesaid; and

(b) if by Tenant, by delivering or by mailing the same to Landlord by registered or certified mail, postage prepaid, return receipt requested, addressed to Landlord at One World Financial Center, New York, New York 10281, Attention: President, or to such other address as Landlord may from time to time

designate by notice given to Tenant as aforesaid (with a copy, given in the manner provided above, addressed to the attention of Landlord's General Counsel, at the address set forth above or at such other address as Landlord may from time to time designate by notice to Tenant as aforesaid).

Section 24.02. Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, three (3) Business Days after being deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received).

## ARTICLE 25.

### COMMUNITY FACILITIES

The public school operated on the Premises shall be made available for public use during non-school hours to the maximum extent practicable in accordance with the Subtenant's Standard Operating Procedures Manual Chapter: Extended Use of School Buildings, Education Law Section 414, and all other Requirements; provided, however, that portions of the public school being utilized during such non-school hours for school-related activities need not be made available for public use.

## ARTICLE 26.

### MARGINAL STREET PLAYGROUND

Section 26.01. Pursuant to Section 26.02, Landlord has permission to use and possession of all or any portion of Marginal Street, Wharf Street or Place adjoining the School Land which the City holds title to or controls (all or any portion thereof so possessed by Landlord, the "Marginal Street Property"), and Landlord agrees to improve such Marginal Street Property for use as a playground (the "Marginal Street Playground"), and to permit Tenant to use the Marginal Street Playground in connection with Tenant's public school activities. During non-school hours, use of the Marginal Street Playground shall be subject to such rules and regulations as Landlord may reasonably impose regarding permitted activities and hours of use. Tenant shall be required to clean the Marginal Street Playground and remove all rubbish and debris therefrom on a daily basis during school days. Landlord shall perform all maintenance and repairs resulting from the reasonable wear, tear and use of the Marginal Street Playground, provided that Tenant shall have kept the Marginal Street Playground clean and



free from rubbish, and Tenant shall be responsible for any repairs resulting from the negligent or willful acts or omissions of Tenant.

Section 26.02. To the extent permitted by law, for so long as the City holds title to or controls any portion of Marginal Street, Wharf Street or Place adjoining the School Land, the City hereby grants Landlord the right to the use of all or any portion thereof for the Marginal Street Playground, subject to the allocation of responsibilities between Landlord and Tenant as provided in Section 26.01.

## ARTICLE 27.

### SUBORDINATION; ATTORNMENMENT

Section 27.01. Landlord's interest in this Lease, as this Lease may be modified, amended or supplemented, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

Section 27.02. If by reason of (a) a default under the Master Lease, or (b) a termination of the Master Lease pursuant to the terms of the Settlement Agreement, such Master Lease and the leasehold estate of Landlord in the Premises demised hereby are terminated, Tenant will attorn to the then holder of the reversionary interest in the Premises demised by this Lease and will recognize such holder as Tenant's Landlord under this Lease. Tenant shall execute and deliver, at any time and from time to time, upon the request of the Landlord or of the Master Landlord any further instrument which may be reasonably necessary or appropriate to evidence such attornment. Tenant waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Premises in the event any proceeding is brought by the Master Landlord to terminate the same, and agrees that this Lease shall not be affected in any way whatsoever by any such proceeding

## ARTICLE 28.

### EXCAVATIONS AND SHORING

If any excavation shall be made or contemplated to be made for construction or other purposes upon property adjacent to the Premises, Tenant shall afford to Landlord or, at Landlord's option, to the person or persons causing or authorized to cause such excavation the right upon thirty (30) days prior written notice to enter upon the Premises in a reasonable manner for the

purpose of doing such work as may be necessary, without expense to Tenant, to preserve any of the walls or structures of the Buildings from injury or damage and to support the same by proper foundations, provided that (i) such work shall be done promptly, in a good and workmanlike manner and in compliance with all applicable Requirements, (ii) Tenant shall have an opportunity to review all available data relative to such excavation and have its representatives present during all such work and (iii) Tenant shall be indemnified by Landlord in the event Landlord performs such excavation, or such other person performing such excavation, as the case may be, against any injury or damage to the Buildings or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder.

## ARTICLE 29.

### CERTIFICATES BY LANDLORD AND TENANT

Section 29.01. At any time and from time to time upon not less than thirty (30) days notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge.

Section 29.02. At any time and from time to time upon not less than thirty (30) days notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such Default of which Landlord may have knowledge.

## ARTICLE 30.

### CONSENTS AND APPROVALS

Section 30.01. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 30.02. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then (i) unless expressly provided otherwise in this Lease, if the party who is to give its consent or approval shall not have notified the other party within thirty (30) Business Days or such other period as expressly specified in this Lease after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefor in reasonable detail, such consent or approval shall be deemed granted, and (ii) if upon notice that a consent or approval is denied, the notified party contests such denial in accordance with this Lease and a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 30.03. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval shall, in addition, not be unreasonably delayed.

Section 30.04. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

Section 30.05. If more than one entity is named as or becomes Tenant hereunder, Landlord may require the signatures of all such entities in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such entity shall designate another such entity as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation.

## ARTICLE 31.

### SURRENDER AT END OF TERM

Section 31.01. On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 23 hereof, Tenant shall well and truly surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by or consented to by Landlord or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 31.02. On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 23 hereof, Tenant shall deliver to Landlord any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for the Buildings, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Buildings, together with a duly executed assignment thereof to Landlord, and any and all other documents of every kind and nature whatsoever relating to the construction, management and operation of the Premises.

Section 31.03. Any personal property of Tenant which shall remain on the Premises for thirty (30) days after the termination of this Lease and after the removal of Tenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant.

Section 31.04. The foregoing provisions of this Article 31 shall survive any termination of this Lease.

Section 31.05. In the event that at any time during the Term of this Lease the term of the Master Lease shall be renewed or extended, Tenant shall have the option to extend the term of this Lease for an equivalent period of time less one (1) day.

#### ARTICLE 32.

##### ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto, and the Development Agreement contain all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

#### ARTICLE 33.

##### QUIET ENJOYMENT

Landlord covenants that, so long as this Lease remains in full force and effect, Tenant shall and may, subject to the terms and conditions of this Lease, peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except those encumbrances, liens or defects of title, created or suffered by Tenant and the Title Matters.

#### ARTICLE 34.

##### ARBITRATION

In case of a dispute or question under Section 6.02(c), Section 7.02(a) or Section 8.01(b) or a dispute regarding the determination of the Consumer Price Index or of the Minimum Amount, and only in such cases, the dispute or question shall be settled by arbitration. The party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within thirty (30) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within thirty (30) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of them shall be

conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization, successor thereto) for such arbitrator to be appointed, or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Article 34, shall be in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. The expenses of arbitration shall be shared equally by Landlord and Tenant but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own proof. Landlord and Tenant shall sign all documents and to do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly. If the arbitration concerns an estimate of cost under Section 7.02(a), then each of the arbitrators shall be a licensed professional engineer or registered architect having at least ten (10) years experience in the design of residential buildings, and, to the extent applicable and consistent with this Article 34, such arbitration shall be conducted in accordance with the Construction Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function.

#### ARTICLE 35.

##### EASEMENTS

Section 35.01. Landlord and Tenant acknowledge and agree that it will be necessary for the following equipment serving only the Premises to be located in portions of the Residential Portion (i) a cooling tower to be located on the roof of the tower section of the Residential Portion, (ii) an exhaust system to be located on the roof of the low rise section of the Residential Portion, (iii) equipment to be located in the basement of the tower section of the Residential Portion, and (iv) associated risers, pipes, ducts, conduits and the like which will pass through the Residential Portion and connect such cooling tower, exhaust system and basement equipment to the Premises, in locations as shown on the Plans and

Specifications (such items enumerated in the foregoing clauses (i) - (iv) of this Section 35.01 being herein referred to collectively as "Tenant's Easement Equipment"). Tenant shall have an easement over the Residential Portion for access to and to install, use, maintain and make repairs, replacements and substitutions to the Tenant's Easement Equipment.

Section 35.02. Landlord and Tenant acknowledge and agree that it will be necessary (a) for certain equipment serving only the Residential Portion to be located on the roof of the Buildings and to pass through the Premises, all as shown on the Plans and Specifications (all such equipment and all pipes, ducts, cables, conduits and the like serving only the Residential Portion but passing through the Premises being herein referred to collectively as "Landlord's Easement Equipment"), (b) for the tower section of the Residential Portion (as shown on the Plans and Specifications) to be constructed on and over a portion of the Premises (the "Residential Tower"), and (c) for the construction and/or use of certain structural columns and foundations to be located in the Premises as shown on the Plans and Specifications (the "Structural Supports") for the structural support of the Residential Portion. Landlord shall have an easement over the Premises for access to and to install, construct, use, maintain and make repairs, replacements and substitutions to the Landlord's Easement Equipment, the Residential Tower and the Structural Supports.

Section 35.03. Landlord and Tenant shall use all reasonable efforts to agree upon mutually satisfactory modifications to locations for Landlord's Easement Equipment, the Structural Supports and Tenant's Easement Equipment shown on the Plans and Specifications as of the Commencement Date. Upon request of any of the parties, any of the other parties shall execute and deliver written agreements in recordable form reasonably satisfactory to the requesting party's counsel identifying the locations and permitting the installation, maintenance, use and continued existence of Landlord's Easement Equipment, the Structural Supports, the Residential Tower and Tenant's Easement Equipment, as the case may be.

Section 35.04. The easements and rights of entry granted herein shall be subject to the following terms and conditions:

(a) such entry shall be at reasonably convenient times and on prior notice to the affected party, except in the event of any emergency;

(b) the affected party shall have the right to have a representative present at all times during such entry;

(c) such entry shall not unreasonably interfere with the normal use and enjoyment of the affected party's premises and shall be conducted in a manner which minimizes such interference; and

(d) all work performed pursuant to such easements and rights shall be performed in accordance with all Requirements and the following conditions:

1. the labor employed for the performance of the work shall be compatible with the labor otherwise employed at the affected party's premises;

2. any pipes, ducts or conduits installed in connection with such work shall be concealed in the walls, floors or ceilings, without materially reducing useable areas of the affected premises;

3. any damage to property resulting from such work shall be promptly repaired by the party causing the damage;

4. the party performing the work shall indemnify and hold harmless the other parties from against any claim, liability, loss, cost, damage and expense (including reasonable attorneys' fees and expenses) arising out of or in connection with such work;

5. all permits needed to comply with the Requirements shall be obtained by the party performing the work and copies thereof shall be delivered to the other parties prior to commencement of the work; and

6. if any work materially affects the structural components of the Premises or the Residential Portion, the party performing the work shall cause a licensed engineer specializing in structural engineering or design to certify to other party that the structural integrity of the affected Premises or Residential Portion, as the case may be, will not be impaired as a result of such work.

#### ARTICLE 36.

##### ROOF OF PREMISES

Tenant shall not install any structures or equipment on the roof of the Premises without Landlord's prior written consent, which consent may be withheld in Landlord's discretion. Landlord hereby consents to those structures and Equipment which are shown on the Plans and Specifications.



## ARTICLE 37.

### DEVELOPMENT RIGHTS

The Landlord expressly reserves for itself: (a) all unused development rights as of the Commencement Date with respect to the Premises or the Residential Portion or both, including any unused development rights which Landlord may obtain in connection with the Marginal Street Property, which are not necessary to maintain the Premises or the Residential Portion under zoning laws as of the Commencement Date (referred to collectively herein as the "Development Rights"); and (b) the exclusive right to grant, hold, modify, amend, supplement, terminate, extend or revoke any and all rights and restrictions relating to the Development Rights; provided that nothing in this Article 37 shall permit Landlord to violate, or to suffer any violation of Article 33 and provided that in no event shall the utilization of any such Development Rights unreasonably interfere with the operation of the Premises as a public school or cause the Premises to be in violation of any applicable Requirements.

## ARTICLE 38.

### INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## ARTICLE 39.

### RECORDING OF MEMORANDUM

Either Landlord or Tenant may record this Lease or any amendment or modification of this Lease. Each shall, upon the request of the other, join in the execution of a memorandum of this Lease or a memorandum of any amendment or modification of this Lease in proper form for recordation.

## ARTICLE 40.

### MISCELLANEOUS

Section 40.01. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 40.02. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 40.03. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 40.04. The liability of Landlord for damages or otherwise shall be limited to monies readily available to Landlord after payment of all "Prior Claims" as defined in the Settlement Agreement, and no other property or assets of Landlord or any of the members, directors, officers, employees, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

Section 40.05. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises and/or the fee estate in the Residential Portion.

Section 40.06. Tenant shall store all refuse from the Premises off the streets in an enclosed area on the Premises, and in a manner reasonably satisfactory to Landlord and in accordance with the requirements of municipal and/or private sanitation services serving the Premises.

Section 40.07. This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 40.08. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 40.09. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 40.10. All references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 40.11. All plans, drawings, specifications or models prepared in connection with any Restoration or Capital Improvement, in the possession of and available to Tenant, shall become the sole and absolute property of Landlord upon the Expiration Date or any earlier termination of this Lease. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date or any earlier termination of this Lease. Tenant's obligation under this Section 40.11 shall survive the Expiration Date.

Section 40.12. All references in this Lease to "licensed professional engineer" or "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 40.13. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 40.14. Neither Subtenant nor any other person not a party hereto shall be deemed a beneficiary of this Lease, or shall have any authority or rights to enforce or to require the Landlord to enforce against Tenant any or all of the provisions, terms, conditions, covenants and agreements of this Lease. Nothing contained in this Section 40.14 shall prevent Subtenant, in its capacity as attorney-in-fact for Tenant, from enforcing Tenant's rights under this Lease against Landlord.


Section 40.15. Depository may pay to itself out of the monies held by Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay Depository any additional charges for such services.

Section 40.16. This Lease may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Lease may be detached from any counterpart

of this Lease and reattached to any other counterpart of this Lease identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, Landlord, the Fund and the City have executed this Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

By:   
*Acting* President

NEW YORK CITY EDUCATIONAL  
CONSTRUCTION FUND

By: \_\_\_\_\_

THE CITY OF NEW YORK

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Corporation Counsel  
of the City of New York

of this Lease and reattached to any other counterpart of this Lease identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, Landlord, the Fund and the City have executed this Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

By: \_\_\_\_\_  
President

NEW YORK CITY EDUCATIONAL  
CONSTRUCTION FUND

By: Patricia Zdalis

THE CITY OF NEW YORK

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Corporation Counsel  
of the City of New York

of this Lease and reattached to any other counterpart of this Lease identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, Landlord, the Fund and the City have executed this Lease as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

By: \_\_\_\_\_  
President

NEW YORK CITY EDUCATIONAL  
CONSTRUCTION FUND

By: \_\_\_\_\_

THE CITY OF NEW YORK

By: Ray M. Markus

APPROVED AS TO FORM:

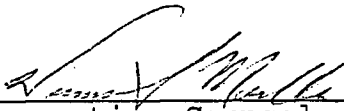
  
Corporation Counsel  
of the City of New York

EXHIBIT A-1

**DESCRIPTION OF  
PART OF PARCEL 22  
-- LEASE AREA FOR RESIDENCE --**

Battery Park City Authority  
(Reputed Owner)

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Manhattan, City of New York and State of New York, and being a part of Battery Park City North, and more particularly bounded and described as follows:

**BEGINNING** at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 105.79 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;

2. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;

3. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;

4. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 113.73 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the northerly line of Warren Street;

5. thence N 88°07'10" W along the northerly line of Warren Street, forming an interior angle of 69°24'27" from the preceding course, a distance of 179.98 feet to the point of intersection of the northerly line of Warren Street and the easterly line of North End Avenue;

6. thence N 1°52'50" E along the easterly line of North End Avenue, forming an interior angle of 90°00'00" from the preceding course, a distance of 196.00 feet to the Point of Beginning, containing 28,026 square feet or 0.643 acres more or less.

As shown on Survey For Builders Pavement Plan Around Parcel 22 as prepared by Lockwood, Kessler & Bartlett, Inc. in Feb. 1996

**EXCEPTING THEREFROM THE FOLLOWING FOUR INCLUSIVE LEVELS FOR  
PURPOSES OF LEASE AREA FOR SCHOOL:**

**Level A (School 1st Floor)**

*Being limited in the vertical plane, the lower limit being at -4.25 feet and the upper limit being at 15.38 feet, and more particularly bounded and described as follows:*

**BEGINNING** at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 105.79 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;

2. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;

3. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;

4. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 113.73 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the northerly line of Warren Street;

5. thence N 88°07'10" W along the northerly line of Warren Street, forming an interior angle of 69°24'27" from the preceding course, a distance of 92.45 feet to a point;

6. thence N 1°52'50" E through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 35.88 feet to a point;

7. thence N 88°07'10" W continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 11.20 feet to a point;

8. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 6.67 feet to a point;

9. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 43.90 feet to a point;

10. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 93.71 feet to a point;

11. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 30.04 feet to a point;

12. thence S 1°52'50" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 0.92 feet to a point;

13. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.40 feet to the point of intersection of the easterly line of North End Avenue;

14. thence N 1°52'50" E along the easterly line of North End Avenue, forming an interior angle of 90°00'00" from the preceding course, a distance of 60.66 feet to the Point of Beginning, containing 21,337 square feet or 0.490 acres more or less.

#### **Level B (School 2nd-5th Floor)**

*Being limited in the vertical plane, the lower limit being at 15.38 feet and the upper limit being at 77.53 feet, and more particularly bounded and described as follows:*

**BEGINNING** at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 105.79 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;

2. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;

3. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;

4. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 113.73 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the northerly line of Warren Street;



5. thence N 88°07'10" W along the northerly line of Warren Street, forming an interior angle of 69°24'27" from the preceding course, a distance of 106.48 feet to a point;
6. thence N 1°52'50" E through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.59 feet to a point;
7. thence S 88°07'10" E continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.33 feet to a point;
8. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 17.78 feet to a point;
9. thence S 88°07'10" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 0.50 feet to a point;
10. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 22.17 feet to a point;
11. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 43.90 feet to a point;
12. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 93.71 feet to a point;
13. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 30.04 feet to a point;
14. thence S 1°52'50" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 0.92 feet to a point;
15. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.40 feet to the point of intersection of the easterly line of North End Avenue;
16. thence N 1°52'50" E along the easterly line of North End Avenue, forming an interior angle of 90°00'00" from the preceding course, a distance of 60.66 feet to the Point of Beginning, containing 21,755 square feet or 0.499 acres more or less.

#### Level C (School Roof Structures)

*Being limited in the vertical plane, the lower limit being at 77.53 feet and the upper limit being at 84.50 feet, and more particularly bounded and described as follows:*

COMMENCING at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 50.67 feet to the POINT OF BEGINNING;
2. thence continuing S 88°07'10" E along the southerly line of Chambers Street, a distance of 55.12 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;
3. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;
4. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;
5. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 48.91 feet to a point;
6. thence N 88°07'10" W through Parcel 22, forming an interior angle of 69°24'27" from the preceding course, a distance of 21.44 feet to a point;

7. thence N 1°52'50" E continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 4.00 feet to a point;
8. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 85.08 feet to a point;
9. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 131.33 feet to the Point of Beginning, containing 10,600 square feet or 0.243 acres more or less.

**Level D (School 6th Floor and Boiler Room)**

*Being limited in the vertical plane, the lower limit being at 77.53 feet and the upper limit being at 98.40 feet above grade, and more particularly bounded and described as follows:*

COMMENCING at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 105.79 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;
2. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;
3. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;
4. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 48.91 feet to the POINT OF BEGINNING;
5. thence continuing S 18°42'43" E still along the westerly line of Marginal Street, Wharf or Place, a distance of 64.82 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the northerly line of Warren Street;
6. thence N 88°07'10" W along the northerly line of Warren Street, forming an interior angle of 69°24'27" from the preceding course, a distance of 60.23 feet to a point;
7. thence N 1°52'50" E through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 19.56 feet to a point;
8. thence N 88°07'10" W continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 8.43 feet to a point;
9. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 11.99 feet to a point;
10. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 12.13 feet to a point;
11. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 4.28 feet to a point;
12. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 18.35 feet to a point;
13. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 26.28 feet to a point;
14. thence S 88°07'10" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.91 feet to a point;
15. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 2.55 feet to a point;

16. thence S 88°07'10" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 52.00 feet to a point;

17. thence S 1°52'50" W still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 4.00 feet to a point;

18. thence S 88°07'10" E still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 21.44 feet to the Point of Beginning, containing 4,330 square feet or 0.099 acres more or less.

*Horizontal Dimensions and Vertical Datum for School Lease Area referenced to set of drawings for Site 22 School as prepared by CK Architect P.C. on 5/1/96. On said drawings, elevation 0.0 is equal to 13.06 feet in Manhattan Borough Presidents Datum.*

EXHIBIT A-2

DESCRIPTION OF  
PART OF PARCEL 22  
-- LEASE AREA FOR SCHOOL --

Battery Park City Authority  
(Reputed Owner)

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Manhattan, City of New York and State of New York, and being a part of Battery Park City North, and more particularly bounded and described as per the following four inclusive levels:

Level A (School 1st Floor)

*Being limited in the vertical plane, the lower limit being at -4.25 feet and the upper limit being at 15.38 feet, and more particularly bounded and described as follows:*

BEGINNING at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 105.79 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;
2. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;
3. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;
4. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 113.73 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the northerly line of Warren Street;
5. thence N 88°07'10" W along the northerly line of Warren Street, forming an interior angle of 69°24'27" from the preceding course, a distance of 92.45 feet to a point;
6. thence N 1°52'50" E through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 35.88 feet to a point;
7. thence N 88°07'10" W continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 11.20 feet to a point;
8. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 6.67 feet to a point;
9. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 43.90 feet to a point;
10. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 93.71 feet to a point;
11. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 30.04 feet to a point;
12. thence S 1°52'50" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 0.92 feet to a point;
13. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.40 feet to the point of intersection of the easterly line of North End Avenue;

14. thence N 1°52'50" E along the easterly line of North End Avenue, forming an interior angle of 90°00'00" from the preceding course, a distance of 60.66 feet to the Point of Beginning, containing 21,337 square feet or 0.490 acres more or less.

Level B (School 2nd-5th Floor)

*Being limited in the vertical plane, the lower limit being at 15.38 feet and the upper limit being at 77.53 feet, and more particularly bounded and described as follows:*

BEGINNING at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 105.79 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;

2. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;

3. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;

4. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 113.73 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the northerly line of Warren Street;

5. thence N 88°07'10" W along the northerly line of Warren Street, forming an interior angle of 69°24'27" from the preceding course, a distance of 106.48 feet to a point;

6. thence N 1°52'50" E through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.59 feet to a point;

7. thence S 88°07'10" E continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.33 feet to a point;

8. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 17.78 feet to a point;

9. thence S 88°07'10" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 0.50 feet to a point;

10. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 22.17 feet to a point;

11. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 43.90 feet to a point;

12. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 93.71 feet to a point;

13. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 30.04 feet to a point;

14. thence S 1°52'50" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 0.92 feet to a point;

15. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.40 feet to the point of intersection of the easterly line of North End Avenue;

16. thence N 1°52'50" E along the easterly line of North End Avenue, forming an interior angle of 90°00'00" from the preceding course, a distance of 60.66 feet to the Point of Beginning, containing 21,755 square feet or 0.499 acres more or less.

### **Level C (School Roof Structures)**

*Being limited in the vertical plane, the lower limit being at 77.53 feet and the upper limit being at 84.50 feet, and more particularly bounded and described as follows:*

COMMENCING at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 50.67 feet to the POINT OF BEGINNING;

2. thence continuing S 88°07'10" E along the southerly line of Chambers Street, a distance of 55.12 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;

3. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;

4. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;

5. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 48.91 feet to a point;

6. thence N 88°07'10" W through Parcel 22, forming an interior angle of 69°24'27" from the preceding course, a distance of 21.44 feet to a point;

7. thence N 1°52'50" E continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 4.00 feet to a point;

8. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 85.08 feet to a point;

9. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 131.33 feet to the Point of Beginning, containing 10,600 square feet or 0.243 acres more or less.

### **Level D (School 6th Floor and Boiler Room)**

*Being limited in the vertical plane, the lower limit being at 77.53 feet and the upper limit being at 98.40 feet above grade, and more particularly bounded and described as follows:*

COMMENCING at the intersection of the southerly line of Chambers Street and the easterly line of North End Avenue;

1. thence S 88°07'10" E along the southerly line of Chambers Street, a distance of 105.79 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the southerly line of Chambers Street;

2. thence S 18°36'00" E along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 110°28'50" from the preceding course, a distance of 26.21 to a point;

3. thence S 19°10'32" E continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 180°34'32" from the preceding course, a distance of 69.63 feet to a point;

4. thence S 18°42'43" E still continuing along the westerly line of Marginal Street, Wharf or Place, forming an interior angle of 179°32'11" from the preceding course, a distance of 48.91 feet to the POINT OF BEGINNING;

5. thence continuing S 18°42'43" E still along the westerly line of Marginal Street, Wharf or Place, a distance of 64.82 feet to the point of intersection of the westerly line of Marginal Street, Wharf or Place and the northerly line of Warren Street;

6. thence N 88°07'10" W along the northerly line of Warren Street, forming an interior angle of 69°24'27" from the preceding course, a distance of 60.23 feet to a point;
7. thence N 1°52'50" E through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 19.56 feet to a point;
8. thence N 88°07'10" W continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 8.43 feet to a point;
9. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 11.99 feet to a point;
10. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 12.13 feet to a point;
11. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 4.28 feet to a point;
12. thence N 88°07'10" W still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 18.35 feet to a point;
13. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 26.28 feet to a point;
14. thence S 88°07'10" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 2.91 feet to a point;
15. thence N 1°52'50" E still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 2.55 feet to a point;
16. thence S 88°07'10" E still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 52.00 feet to a point;
17. thence S 1°52'50" W still continuing through Parcel 22, forming an interior angle of 90°00'00" from the preceding course, a distance of 4.00 feet to a point;
18. thence S 88°07'10" E still continuing through Parcel 22, forming an interior angle of 270°00'00" from the preceding course, a distance of 21.44 feet to the Point of Beginning, containing 4,330 square feet or 0.099 acres more or less.

*Horizontal Dimensions and Vertical Datum referenced to set of drawings for Site 22 School as prepared by CK Architect P.C. on 5/1/96. On said drawings, elevation 0.0 is equal to 13.06 feet in Manhattan Borough Presidents Datum.*

8/2/96

## **EXHIBIT B**

### **TITLE MATTERS**

All capitalized terms not otherwise defined herein shall have the meanings provided in the Agreement of Lease ("Ground Lease") dated as of October 1, 1996 between Battery Park City Authority, New York City Educational Construction Fund ("ECF") and the City of New York ("City").

1. Master Lease.
2. Settlement Agreement.
3. Landlord's easements granted in Article 35 of the Ground Lease.
4. Memorandum of Understanding.
5. Option to Purchase dated as of June 6, 1980 among UDC, BPC Development Corporation, BPCA and the City of New York and recorded on June 11, 1980 in Reel 527, page 153 in the Office of the Register of New York City (New York County), as amended by Amendment to Option to Purchase dated as of August 15, 1986 between BPCA and the City of New York and recorded on October 22, 1986 in Reel 1133, page 582 in said Register's Office; and further amended by Second Amendment to Option to Purchase dated as of May 18, 1990 between BPCA and the City of New York and recorded on May 30, 1990 in Reel 1697, page 294 in said Register's Office.
6. The state of facts shown on the survey dated October 5, 1989 prepared by Lockwood, Kessler & Bartlett, Inc., and last revised on December 4, 1995 and any additional state of facts a visual inspection would reveal.
7. Zoning and other laws, ordinances, governmental regulations, orders and requirements pertaining to the Premises.
8. Rights of the Federal Government to enter upon and take possession of lands, now or formerly lying below the high water mark of the Hudson River.